91-618

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

Daniel P. SHEEHAN, Esq.
Petitioner,

versus

John HULL, Richard Secord, Albert Hakim, Thomas Clines, Adolfo Calero, Robert Owen, John Singlaub, Theodore Shackley, Rafael "Chi Chi" Quintero, Ronald Joseph Martin, Sr., Mario Delamico, James McCoy, Moises Nunez, and Jorge Gonzalez,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI OF DANIEL P. SHEEHAN, ESQ.

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QUESTIONS PRESENTED

#1

Is a plaintiff's attorney deprived of his Fifth and Sixth Amendment rights not to be deprived of his property without due process of law when a district court imposes upon him a Rule 11 sanction of over $1 million based upon a finding that the attorney filed and prosecuted a civil complaint which had "no evidence," when this finding is made by the district court directly in the face of substantial evidence to support the claims, but the district court considered said evidence to be nonexistent unless it was submitted before trial in an affidavit or deposition form or in some other form that was court admissible.

#2

Is a plaintiff's attorney deprived of his Fifth Amendment right not to be deprived of his property without due process of law when a district court imposes upon him a fine of over $1 million pursuant to the "bad faith" exception to the American Rule, based upon a finding that the attorney filed an affidavit containing false representations when this finding is based solely upon the conflicting affidavits of the defendants, with no hearing being accorded to the plaintiff's attorney at which (1) to evaluate the comparative credibility of the affidavits submitted, (2) to undertake the cross-examination of conflicting witnesses, or (3) to evaluate the alleged bad faith motive of plaintiff's attorney.

#3

Is a plaintiff's attorney deprived of his Fifth Amendment right not to be deprived of his property without due process of law when a district court imposes upon him a fine of over $1 million, equal to virtually all of the defendants' costs and attorney's fees, pursuant to Title 28 U.S.C. §1927 on a finding of fact that the attorney "vexatiously multiplied litigation" when the district court made no finding of the proportion of the defendants' costs or attorney's fees that were caused by this unspecified multiplication of litigation cited by the court in its finding.

#4

Did the district court abuse its discretion when it imposed a penalty of over $1 million against the plaintiffs' attorney pursuant to Rule 11, Title 28 U.S.C. §1927 and the bad faith exception to the American Rule on the record of evidence supporting the plaintiff's complaint found in the record below.

PARTIES

Tony Avirgan and Martha Honey were plaintiffs-appellants in the court of appeals. Daniel P. Sheehan (plaintiffs' counsel) and the Christic Institute (the law firm of plaintiffs' counsel), were non-party-appellants in the court of appeals. Daniel P. Sheehan is the Petitioner herein. Avirgan and Honey and the Christic Institute have submitted separate Petitions. Appellees in the court of appeals were those listed as defendants-appellees in the caption of the case sought to be reviewed (reprinted in the appendix to this Petition at App.I, p. 1A-2A.

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OPINIONS IN THE CASE

The June 23, 1988 decision (on the merits) of the United States District Court for the Southern District of Florida is reported at 691 F. Supp. 1357 and is reprinted in the appendix at App.I, p. 24A-30A. The February 2, 1989 order of the United States District Court for the Southern District of Florida is reported at 705 F. Supp 1544 and the clarification of that order is reported at 125 F.R.D. 189; these orders are reprinted in the appendix at App I, p. 31A-48A; and App.I 49A-52A, respectively.

The June 18, 1991 decision of the United States Court of Appeals for the Eleventh Circuit is reported at 932 F.2d 1572 and is reprinted in the appendix at App.I, p. 1A-23A. The September 9, 1991 order denying rehearing and rehearing in banc is not reported and appears in the appendix at App.I, p. 53A.

JURISDICTION

The judgment of the court of appeals sought to be reviewed was entered on June 18, 1991. App.I, p. 1A. On August 7, 1991, Justice Kennedy signed an order extending the time to file this petition for a writ of certiorari to and including October 15, 1991. The order denying petitioner's (petition for rehearing and) suggestion of rehearing en banc was entered on September 9, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THE CASE

The Fifth Amendment to the United States Constitution provides;

> No person shall be held to answer for a capital,

> or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides;

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Federal Rule of Civil Procedure involved herein is Rule 11, which provides in pertinent part:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address.... The signature of any attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information and belief formed after

reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleadings, motion, or other paper, including a reasonable attorney's fee.

28 U.S.C. §1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

STATEMENT OF THE FACTS

On May 29, 1986, Case No. 86-1146-CIV-JLK was filed in the United States District Court for the Southern District of Florida. This multi-count civil complaint charged Major General Richard Secord and twenty-nine other men with being members of a federal criminal racketeering "enterprise," prohibited by the Federal Racketeer Influenced and Corrupt Organization Act (hereafter RICO), 18 U.S.C. §1961 *et seq.* The RICO count charged that this enterprise was smuggling arms and explosives from the United States into Central

America to the Nicaraguan *contras*. This count also charged that members of this RICO enterprise had conspired to commit, and had actually caused to be committed, specific acts of murder, criminal assault, arson, kidnapping, and drug smuggling in support of the *contras* between 1983 and 1986.[1]

Plaintiff Tony Avirgan, a free-lance television cameraman working for ABC Evening News, charged in one assault count of this May 1986 complaint that he had been injured in his business property and person by a bomb detonated at an international press conference held by dissident *contra* leader Eden Pastora in La Penca, Nicaragua on May 30, 1984. Mr. Avirgan's co-plaintiff and wife, Martha Honey[2], in the second assault count, alleged that she had been threatened with murder after her investigation into the La Penca bombing uncovered evidence implicating John Hull and certain other defendants named in this lawsuit.[3]

Prior to filing this civil complaint, the plaintiffs' attorney, Daniel Sheehan, who is General Counsel for The Christic Institute of Washington, D.C., had conducted an extensive inquiry into the facts. This pre-filing information was set forth in a December 12, 1986 affidavit which was submitted

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[1]Many of these defendants were later shown by Congress and by the Independent Counsel Lawrence Walsh to have been operatives of Richard Secord's private covert operations "Enterprise."

[2] Martha Honey was a free-lance journalist working in Costa Rica for National Public Radio, the British Broadcasting Corporation, the Canadian Broadcasting Corporation, and the Sunday Times of London.

[3] This investigation was financed in part by the Newspaper Guild, and the Committee to Protect Journalists, and was submitted to the district court in opposition to the Rule 56 and Rule 11 motions filed by the defendants.

to the district court before any proceedings commenced in this case. This affidavit is included in the Petitioners' Joint Appendix at App.II, p. 391A.

This information included petitioner Sheehan's personal presence at the May 23, 1986 sworn testimony given by mercenary Jack Terrell to a Costa Rican Federal Court in which witness Terrell stated, under oath that: 1) he attended a January 1985 meeting at the Miami home of FDN *contra* leader Adolfo Calero at which defendants Calero, Hull, Owen, and Vidal conspired to carry out a second assassination effort against Eden Pastora; 2) during the course of this meeting, defendant Vidal stated, in the presence and within the hearing of defendants Hull, Calero and Owen - and in furtherance of the criminal objective of persuading witness Terrell to undertake the second assassination effort against Eden Pastora: "We put a bomb under him [Eden Pastora] but it did not work because of bad timing"; 3) at this January 1985 meeting, Terrell agreed to carry out this assassination objective; and 4) defendant Vidal physically pointed out to Terrell at this January 1985 meeting, a man sitting on the veranda of defendant Calero's home whom defendant Vidal identified as a man named Amac Galil [Terrell later identified, in a sworn statement given to the Costa Rican Judicial Police, a photograph of the La Penca bomber as this same man].

Petitioner Sheehan's pre-filing information also included plaintiff Honey's interview of one Alberto Guevara in which interview Guevara stated to Honey the following: 1) Guevara, on or about May 8, 1984, saw defendant Hull accompany the man publicly identified by the Costa Rican federal police as the "Per Anker Hansen," who had placed and detonated the La Penca bomb, to a northern Costa Rican Rural Guard station at which defendant Hull assisted "Hansen" in securing a boat and an outboard motor and then witnessed "Hansen" and Hull set off in the direction of La Penca; and 2) Guevara, on May 30, 1984, again saw this

same "Per Anker Hansen" at the Hotel Irazu in San Jose, Costa Rica among the journalists that were gathering to attend the press conference at La Penca.

This pre-filing information also included petitioner Sheehan's personal interview of Carlos Rojas Chinchilla in which witness Rojas stated: 1) that in July 1985, Rojas met David X who confessed, in an effort to persuade Rojas to aid him in his effort to escape from Costa Rica without being arrested for the La Penca bombing, that he was a co-conspirator in the enterprise operating from John Hull's ranch in Costa Rica, and that he knew that the group which had planned and executed the La Penca bombing included defendants Hull, Calero, Posey, Vidal, Galil (aka "Hansen") and Corvo; 2) that David X told Rojas that he had witnessed a pre-May 30, 1984 meeting between defendant Hull and "Hansen" in Ciudad Quesada, Costa Rica, where he saw Hull pay "Hansen" $50,000 as a partial payment to assassinate Eden Pastora; 3) that witness Rojas had audio tape-recorded some of the inculpatory conversations with David X (a copy of which he gave Sheehan through the plaintiffs, and a transcript of which Sheehan provided to the defendants and to the district court during discovery and pre-trial proceedings); 4) that in August 1985, witness Rojas and David X were physically beaten by three men employed by John Hull, and that these men then kidnapped both Rojas and David X and forcibly took them to a place that Rojas later identified to be John Hull's farm where, in Rojas' presence, these men stated that they were going to contact "Mr. Hull" to tell him that they had captured "the squealers."

Prior to filing the complaint, petitioner Sheehan also had reviewed all of plaintiff Honey's professional interviews and conclusions of her investigation which were published in her book, La Penca; Report of an Investigation (hereafter, La Penca Report). See App.II at 66A. Copies of these interviews, and of the La Penca Report, were submitted to the defendants and to the district court during discovery and

pre-trial proceedings, and in opposition to the defendants' motions for sanctions. The La Penca Report set forth the detailed data on the basis of which Honey, Avirgan and Sheehan had formed their good faith belief that defendants Hull, Vidal, and other defendants named in the May 29, 1986 complaint had personally planned and carried out the May 30, 1984 La Penca bombing.

This pre-filing information also included an interview of Marcos Aguado, who was at the time the head of Pastora's air force, who stated that he had attended a pre-May 30, 1984 meeting in Costa Rica in which defendant Hull and Juan Jose Saborio had agreed that "a quick way had to be found to get rid of" Eden Pastora. Plaintiffs submitted a sworn affidavit of Aguado's testimony to the district court in opposition to defendants' motions for summary judgment.

With regard to attorney Sheehan's charges set forth in the May 1986 complaint that certain defendants had committed this bombing as a predicate act of an on-going criminal racketeering enterprise -- thus generating the derivative civil RICO liability of the co-members of the enterprise -- attorney Sheehan demonstrated to the district court that he possessed the following information before filing: 1) The detailed interviews of retired U.S. Army Chief Warrant Officer Eugene Wheaton (later submitted to the court in a full sworn deposition) describing Wheaton's knowledge of this "enterprise" from his personal participation in it, and from his first-hand discussions with defendant Hull's criminal co-conspirators, and; 2) The interviews of enterprise associate Edwin P. Wilson (later submitted to the court in the form of a lengthy sworn affidavit) directly incriminating certain defendants in the long-lived criminal assassination program described in the May 1986 complaint.

The Costa Rican government indicted defendants Hull and Vidal for the first degree murder of the persons killed in the La Penca bombing, and has now demanded Hull's extradition from the United States to stand trial. Defendants

Hull and Vidal were charged by the Costa Rican government with having committed this crime as members of the very network described in petitioner's May 1986 complaint.

Despite this compelling pre-filing evidence, the plaintiffs' federal civil complaint was aggressively attacked through specific pleadings in the district court by defendant Secord and his co-defendants as a malicious "fabrication" by the plaintiffs and their counsel. In fact, the defendants formally charged before the district court that the plaintiffs and their counsel were prosecuting, in "bad faith," a set of false criminal charges without the support of any adequate pre-filing investigation.[4]

After eight months of opposing Rule 12(b)(6) and Rule 8 motions to dismiss for lack of specificity, the plaintiffs commenced discovery on their October 3, 1986 Amended Complaint on February 24, 1987 immediately after Judge King ordered the defendants to answer the complaint. The plaintiffs filed numerous interrogatories and requests for documents, as well as demands for depositions.

On July 27, 1987, following four months of unbroken defiance by the defendants of the numerous requests for discovery issued by plaintiffs' counsel, Judge King held a hearing on the plaintiffs' Motion to Compel Discovery. At this hearing, counsel for defendant Secord demanded that Judge King require the plaintiffs, as a precondition to the defendants' cooperation with any discovery, to reveal to the court evidence proving that each defendant named in the complaint had personally participated in planning or executing the specific May 30, 1984 assault that injured plaintiff Avirgan. Judge King, in his July 30, 1987 Order Setting Discovery Limitations, rejected this demand of the

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[4] The defendants contended that the December 12, 1986 Affidavit (App.II at 391A) filed by attorney Sheehan contained further "bad faith" false statements in support of these false charges.

defendants.

Instead, he ordered the plaintiffs to use the "first phase" of their discovery to prove the following three elements of their case before conducting any further discovery: A) that the specific federal criminal racketeering "enterprise" alleged by the plaintiffs and their counsel in the RICO count of their complaint in fact existed; B) that this enterprise was functioning in Costa Rica between 1983 and 1986; and C) that each of the defendants named in the complaint was an active and willing member of this RICO Enterprise between 1983 and 1986, the time period when the La Penca bombing was planned and committed.

Between July 30, 1987 and March 31, 1988 the plaintiffs and their counsel conducted this restricted discovery and, on March 31, 1988, presented to the court a sworn Declaration of Counsel which revealed substantial evidence proving these three elements. This declaration is included in the Petitioners' Joint Appendix at App.II 89A-390A. The existence of the evidence to prove these facts and the general nature of this evidence were both demonstrated to the district court in this Declaration of Counsel.[5] App.II, p. 89A-390A.

However, when confronted by this evidence on March 31, 1988, Judge King adamantly refused to lift the geographical, time-frame and subject matter limitations he had previously only temporarily imposed upon the plaintiffs' discovery in July. Furthermore, Judge King also refused to postpone the trial date so as to allow the plaintiffs any reasonable time to perform the additional discovery previously promised after their proof of the first three elements of their case. This

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[5] In over 1000 footnotes, this Declaration revealed the existence and nature of evidence in the "court admissible" form of affidavits and sworn depositions. Other pieces of this evidence needed further "perfecting" only as to form, to be made admissible at trial.

refusal, in the face of the plaintiffs' showing of evidence, left the plaintiffs and their counsel a mere 6 weeks of remaining discovery time to convert into admissible form their considerable circumstantial and direct evidence which supported the conclusion that defendant Hull, acting as an agent for the defendants' criminal enterprise, hired defendant Galil (aka "Per Anker Hansen") to commit the May 30, 1984 La Penca bombing and that defendant Galil did, in fact, commit this bombing which injured plaintiff Avirgan.[6]

After the May 15, 1988 close of discovery, thirteen defendants moved for summary judgment. These Rule 56 motions were supported by nothing more than the self-serving affidavit of each defendant setting forth his unsupported conclusory assertion of his "lack of responsibility," either direct or indirect, for the plaintiffs' injuries, and a further conclusory assertion that the plaintiffs had "no evidence" linking either Galil or Hull to the bombing or linking Hull to Galil. In response to the defendants'

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[6] During this short 6-week period: 1) Defendant Hull was subpoenaed for deposition, but refused to participate in any deposition convened in Costa Rica (claiming that the plaintiffs' attorneys could not "practice law" in Costa Rica without a license), or in the U.S. At a pre-trial hearing four days before the discovery cut-off date, Judge King set a new date for Hull's pre-trial deposition in the U.S., but refused to grant plaintiffs' motion to compel Hull's attendance; 2) Judge King refused to accept for filing in opposition to the defendants' motions for summary judgement a sworn affidavit of Edwin P. Wilson directly incriminating several of the named defendants as active members of the enterprise described in the complaint. Instead, Judge King required that witness Wilson's testimony would be acceptable in the form of a sworn deposition. However, when the plaintiffs noticed witness Wilson for this deposition, the defendants refused to participate and successfully moved to quash the notice of deposition.

unsupported motions for summary judgment, the plaintiffs presented to the district court substantial evidence on the issue of causation.

Furthermore, on May 17, 1988, at a pre-trial attorneys' conference, plaintiffs' counsel presented the defendants with a pre-trial stipulation including both a list of witnesses and exhibits which the plaintiffs intended to call at trial. This pre-trial stipulation was filed with the district court and was discussed at the pre-trial conference with Judge King on May 27, 1988. In this stipulation, the plaintiffs notified the court and opposing counsel of the existence of 58 witnesses who plaintiffs planned to call to testify as to: (a) the causation of the assault at La Penca, (b) the identity of the La Penca bomber and his direct connection to the enterprise, (c) the details of the night of the assault at La Penca, or (d) to lay the foundation for the presentation of evidence on the causation of the La Penca bombing assault by defendants.[7] Plaintiffs also notified the defendants and the court of the existence of 49 specific exhibits which would be presented at trial in support of the testimony of these 58 witnesses.

Moreover, the evidence filed by the plaintiffs with the district court in opposition to the defendants' unsupported motions for summary judgment included the following ten witnesses' testimony, all of whom were named by plaintiffs as potential trial witnesses:

--the depositions of Eden Pastora and Carol Prado, which demonstrated that defendants Hull, Vidal, and Corbo worked together to divide Pastora's *contra* forces; that supplies to Pastora were cut-off in the Spring of 1984 by Oliver North as a warning; that Pastora received a 30-day ultimatum from

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[7] All of these witnesses, and the nature of their testimony, had been previously described to the defendants and to the district court through compliance with defendants' discovery demands, in depositions, or was revealed in other pre-trial filings.

the Central Intelligence Agency to join the FDN *contras* based out of Honduras by June 1, 1984 or suffer the consequences; and that the La Penca bomber, posing as "Per Anker Hansen," was on the San Juan river visiting Pastora's bases (including La Penca) 22 days before the bombing at La Penca;

--the affidavit of Jesus Garcia, wherein he stated that he overheard a group of Cubans, in the presence of a man whom Garcia identified as "Amac," claim direct responsibility for the La Penca bombing;

--the deposition of Carlos Rojas Chinchilla, in which Rojas recounts the confessions of enterprise co-conspirator David X made directly to him connecting the enterprise to the assault at La Penca (see *supra* p. 6);

--the 3 June, 1988 sworn affidavit of Martha Honey, in which she verifies the presence of Galil in Honduras through car rental records, which she had in her possession, in March, 1984, which evidence lent direct support to David X's story;

--the testimony of Jack Terrell at the 1986 criminal libel trial brought by John Hull against Honey and Avirgan (see *supra* p. 5);

--the deposition of Hull associate William Crone, who testified that on the night of the bombing, Hull called Crone up and told him specifically not to participate in the evacuation of victims;

--the affidavit of Marcos Aguado (see *supra* p. 7);

--the sworn deposition of Costa Rican Attorney General Fernando Cruz Castro, the Chief Prosecutor who had overseen the OIJ (Judicial Investigations Organization, equivalent to the F.B.I.) investigation of the La Penca bombing, and who testified as to the findings of the official investigation including, but not limited to, the following: a) that the bomber posed as journalist "Per Anker Hansen;" b) that "Hansen" registered at the Gran Via Hotel in San Jose, Costa Rica in early May, 1984; c) that "Hansen" carried a

bomb constructed of C-4 explosives to the bombing site in a metal suitcase with the word "CANON" printed across it; d) that "Hansen" detonated the bomb by radio frequency via two-way walkie talkie; and e) that "Hansen" left the country the morning after the bombing took place;

--the sworn deposition of plaintiff Tony Avirgan, taken by the defendants, in which Avirgan testified as to his direct knowledge about the La Penca bombing, including, but not limited to "Hansen's" presence at the press conference, with the metal case [containing the bomb] at his side; and

--the sworn deposition of Alberto Guevara. (see *supra*, p. 5).

When confronted with this exposition of evidence, Judge King entered an Order of Summary Judgment against the plaintiffs. *Avirgan v. Hull*, 691 F.Supp 1357 (S.D. Fla. 1988); App.I. p. 24A-30A. The district court summarily ruled that because the plaintiffs had revealed their assault evidence to the court in a form that was not "court admissible," that this evidence could not be considered in the Rule 56 proceeding. *Id.* The court did not allow plaintiffs an opportunity to perfect their evidence.

After entering the Order of Summary Judgment against the plaintiffs, the district court, thereupon, concluded summarily that certain other conclusory assertions made by the defendants were true. The defendants filed self-serving affidavits in support of their Rule 11, §1927 and bad faith motions for sanctions to the effect that petitioner had lied in his filings. On the basis of this second finding, made directly in the face of petitioner's charge-by-charge refutation of these assertions[8] and without any hearing whatsoever being accorded to plaintiff's counsel -Judge King imposed over $1

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[8] The affidavit of Daniel P. Sheehan filed in Opposition to the defendants' motions for sanctions is included in the Petitioners' Joint Appendix at App.II 55A-88A.

million in fines against the plaintiffs' attorney, and against his law firm pursuant to Rule 11, §1927, and the "bad faith" exception to the American Rule. *Avirgan v. Hull*, 125 F.R.D. 189 (S.D. Fla. 1989); App.I, p. 49A-52A.

A supersedeas bond, supported by a letter of credit was posted by the Christic Institute in March of 1989. On March 8, 1989, a Stay of Judgment on the Order of Sanctions was issued by the district court. On May 25, 1989, plaintiffs filed a Notice of Appeal from the district court's three sanctions orders of February 2, February 24 and April 27, 1989. The appeals from the Rule 56 Summary Judgment, the Rule 11, the §1927, and the "bad faith" orders of sanctions were consolidated on March 22, 1989. Oral argument was held before a panel of the Eleventh Circuit on February 25, 1991. The panel issued its opinion affirming, *in toto*, the district court's rulings on summary judgment and sanctions on June 18, 1991. *Avirgan v. Hull*, 932 F.2d 1572 (1991); App.I at 1A.

After sustaining all of Judge King's rulings, the panel adopted the finding in the district court's clarification order that the plaintiffs and their attorney appeared also to have violated their "continuing obligation" to voluntarily dismiss the complaint after it became clear that they could not prevail in the case. App.I at 51. However, the panel neither stated at which specific point in the proceedings this obligation arose, nor undertook any effort to precise the portion of attorneys' fees that defendants subsequently accrued so as to justify the damages.

REASONS FOR GRANTING THE PETITION

I. THE OPINION OF THE PANEL UPHOLDING THE RULE 11 ORDER OF SANCTIONS IMPOSED AGAINST PETITIONER CONFLICTS DIRECTLY WITH THE SUPREME COURT OPINIONS IN *CELOTEX v. CATRETT*, 477 U.S. 317 (1986) AND *ANDERSON v. LIBERTY LOBBY*, 477 U.S. 242 (1986)

It is true, as both the district court and the Eleventh Circuit panel in *Avirgan* observed, that:

> In practically every motion for summary judgment, the appellees asserted that they had no involvement, directly or indirectly, in the La Penca bombing, that they were not the cause of any of the injuries, and that they were not and had never been members of an illegal enterprise.

Avirgan, et al., v. Hull, et al., 932 F.2d 1572 (11th Cir. June 18, 1991); App.I at 15A.

In addition, defendant Owen asserted in his affidavit filed in support of his Rule 56 motion - with no reference whatsoever either to the plaintiffs' evidence or to the record – that the plaintiffs possessed "no evidence" tending to support their conclusion that defendant Hull hired defendant Galil to commit the La Penca bombing or that Galil did, in fact, commit the bombing.

However, both the district court, and the panel ignored the mandate of this Court that:

> it is not enough to move for summary judgment . . . with a conclusory assertion that the plaintiff has no evidence to prove his case . . . without supporting the motion in any way.

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 LEd.2d 265 (1986)(White, J., concurring)(emphasis added).

The nature of the "support" required to be supplied by a movant for summary judgment, over and above his simply "informing" the court of his conclusory assertion, before his Rule 56 motion can be considered by a district court, was set forth in *Celotex* by Justice Rehnquist and Justices Marshall, Powell and O'Connor as follows:

> Of course, a party seeking summary judgment always bears the initial responsibility of [1] informing the district court of the basis for its motion and [2] identifying those portions of the 'pleadings', depositions, answers to interrogatories and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.

Celotex, 477 U.S. at 323 (enumeration inserted and emphasis added).

It is self-evident that a movant cannot identify as "support" for his conclusory assertion simply that he was not in any way responsible for the plaintiffs' injuries. The movant is required to refer the district court to positive portions of the pleadings, depositions, interrogatories or some specific affidavits which concretely "negate" the plaintiffs' available evidence on this issue, or which "demonstrate the absence of" any positive pieces of evidence possessed by the plaintiffs which tend to support the plaintiff's factual contention. Simply "conclusorily asserting" that the defendant is not responsible for the assault against the plaintiff, in no way "negates" the affirmative contrary evidence of plaintiffs' witnesses which the record shows the plaintiffs and their counsel possessed. The defendants, however, made no effort whatsoever before the district court to "support" the "conclusory assertions" made in their

affidavits.

Despite the fact that the district court was presented with an extensive list of witnesses whom the plaintiffs represented to the court could provide evidence tending to support these conclusions of fact, despite the fact that this evidence was described to the court, and despite the fact that this evidence was both positive and admissible in its nature, the district court simply summarily entered an Order of Summary Judgment against the plaintiffs' complaint. The district court entered this order on the sole ground that the opposition filed by the plaintiffs had not tendered evidence in court-admissible form. *Avirgan v. Hull*, 691 F.Supp. 1357 (S.D. Fla. 1988); App.I, p. 24A.

The district court chose simply to believe the defendants' Rule 56 unsupported conclusory assertions made in their affidavits and granted their summary judgment motions. By upholding this action by the district court, the Eleventh Circuit panel effectively authorized "trial on affidavit" - directly contrary to the dictate of this Court set forth in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

> [Our holding] by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.

Anderson, 477 U.S. at 255.

Most importantly, the district court and the panel ignored the mandate of this Court set forth in *Celotex* in which Justice White, in his controlling concurring opinion, requires

that a district court summarily reject a Rule 56 motion if it is supported by nothing more than a self-serving affidavit conclusorily asserting that the plaintiff has "no evidence" to support his claim without any supporting discussion of the existent evidence in the record.

> I agree that the Court of Appeals was wrong in holding that the moving defendant must always support his motion [for summary judgment] with evidence or affidavits showing the absence of a genuine dispute about a material fact. I also agree that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case and hence that there can be no factual dispute. But the movant must discharge the burden the Rules place upon him: It is not enough to move for summary judgment without supporting the motion in any way or with a concusory assertion that the plaintiff has no evidence to prove his case.
>
> A plaintiff need not initiate any discovery, or reveal his witnesses or evidence unless required to do so under the discovery Rules or by court order. Of course, he must respond if required to do so; but he need not also depose his witnesses or obtain their affidavits to defeat a summary judgment motion asserting only that he has failed to produce any support for his case. It is the defendant's task to negate, if he can, the claimed basis for the suit. . . . [I]f respondent has named a witness to support her claim, summary judgment should not be granted without [the movant] somehow showing that the named witness' possible testimony raises no genuine issue of fact.

Celotex, 477 U.S. at 328 (White, J., concurring)(emphasis added).

In support of their assault charge, the plaintiffs herein revealed the names of their witnesses and informed the district court of the nature of the evidence that each such witness possessed. The district court condemned this response as inadequate to defeat the defendants' conclusory assertion of "no evidence," on the sole ground that plaintiffs had not submitted their causation evidence to the district court in a court-admissible form, such as by affidavit or deposition or by certified documents. *Avirgan v. Hull*, 691 F.Supp 1357; App.I, p. 24A.

Petitioner maintains that this Court's ruling in *Celotex* is directly controlling herein because it provides that it "is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case." To defeat a summary judgment motion asserting only that the plaintiff has failed to produce any evidence to support his case, the respondent need only reveal the names of his witnesses and the nature of their evidence in order to effectively counter such conclusory assertions of the movant. The plaintiff and his attorney do not also need to depose their witnesses or obtain their affidavits. The petitioner maintains that, in light of this Court's express rulings in *Celotex*, such revealed evidence cannot be entirely disregarded by the district court merely because this evidence is not tendered in a court-admissible form.

To enter a Rule 56 order against a plaintiff on the record of such a set of filings, i.e. to deny his right to a jury trial on his claim based solely upon the provision to him of these procedures, deprives such a plaintiff of his Seventh Amendment right to a trial by jury on his civil claim without due process of law.

Moreover, and directly at issue in this Petition is the fact that when a plaintiff's attorney is sanctioned by the same district court under Rule 11 for allegedly filing and prosecuting a civil complaint with "no evidence" to support

this complaint - and this finding of "no evidence" is based directly upon the district court's "no evidence" finding made in favor of the defendants' Rule 56 motion arrived at through the above described proceeding - then the attorney himself has standing to object to the use of this constitutionally-flawed procedure.

Petitioner was deprived of over $1 million of his personal property predicated upon a Rule 11 finding that he had "no evidence" to support his filing of the complaint. The finding was based directly upon the same constitutionally-flawed procedure used to entirely disregard the plaintiffs' evidence in the Rule 56 proceeding. This procedure also violates petitioner's Fifth and Sixth Amendment rights not to be deprived of $1 million of his property without due process of law.

A finding of "no evidence" cannot be predicated solely upon a conclusory assertion made in an affidavit filed by an adversarial defendant asserting that plaintiff's counsel had "no evidence" to support his claim, when that conclusory assertion has been explicitly belied by revelation to the court of 58 named witnesses and 49 specific exhibits which constitute witnesses and evidence supporting the charges in the complaint. Unless and until the defendant "negates" this evidence, the civil attorney is constitutionally entitled to his presumption of innocence of the charge that he had "no evidence" to support his complaint.

II. THE BAD FAITH SANCTIONS AGAINST PETITIONER VIOLATED HIS DUE PROCESS RIGHTS

Sanctions, whether imposed under Rule 11, 28 U.S.C. §1927, or the "bad faith" exception to the American Rule, entail the exercise of considerable discretion on the part of a district court. Because of the potential for abuse inherent in discretionary determinations, the safeguards of due process are particularly important. "The purpose of this requirement

is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . ." *Fuentes v. Shevin*, 407 U.S. 79, 80-81 (1972). Furthermore, when, as here, the sanction is severe and based upon subjective determinations, due process safeguards assume an even more critical role in the administration of justice.

The issue of due process in the imposition of sanctions of this magnitude bears consideration by this Court. Awards of attorney's fees pursuant to the various sanctioning mechanisms are increasingly encountered in federal litigation. Two of this Court's recent decisions involved sanctions of the magnitude encountered here. *Chambers v. NASCO, Inc.*, __ U.S. __, 111 S.Ct. 2123 (1991); *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. __ (1991). Because of the enormous discretionary sanctioning power vested in judges - and the consequent potential for abuse - it is imperative that due process protections be accorded. This Court has not heretofore addressed the question of how much process is due to a respondent on a sanctions motion. An authoritative pronouncement by this Court of the contours of that due process is necessary.

A. The Assessment of a Sanction in Excess of $1 Million Must Comport with the Due Process Clause of the Fifth Amendment

The Fifth Amendment to the U.S. Constitution mandates that no person shall be deprived of property without due process of law. Indeed, the requirements of due process apply to deprivations of property worth far less than is at stake in this case. See, e.g., *Fuentes*, 407 U.S. at 90 (assortment of household goods, of disputed ownership, held property protected by due process clause). Of course, depending upon the importance of the interest involved, due process tolerates variances in its form. *Fuentes*, 407 U.S. at

83. Petitioner was admittedly afforded an opportunity to submit written oppositions to the defendants' motions for sanctions. But given the severity and clearly punitive nature of the sanction award at bar petitioner should have been afforded extensive due process safeguards: "The more serious the possible sanction . . . the more process that will be due." *Donaldson v. Clark*, 819 F.2d 1551, 1561 (11th Cir. 1987)(in banc).

1. Due Process and Rule 56 Mandate that Findings of Bad Faith or Improper Purpose May Not Be Made Solely On The Basis of Affidavits

The crux of the district court's entire million dollar sanction was its wholly conclusory finding of "bad faith" on the part of petitioner. Such an enormous sanction imposed pursuant to the bad faith exception to the American Rule is not unprecedented. See *Chambers, 111 S. Ct. 2123 (1991).* However, as this Court admonished in *Chambers*: "[a] court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Chambers*, 111 S. Ct. at 2136 (citation omitted). Furthermore, the ruling in *Roadway Express v. Piper*, 447 U.S. 752 (1980) mandated a hearing prior to imposition of a "bad faith" sanction; "attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." *Id.*, at 767 (emphasis added); see also *Textor v. Board of Regents of N. Ill. Univ.*, 711 F.2d 1387, 1395 (7th Cir. 1983)("court erred in imposing fees [for willful abuse of the judicial process] without the prior hearing required by *Roadway Express*").

Due to the conclusory nature of the district court's ruling, one is left to guess the basis of the bad faith sanction. The court implies that petitioner misrepresented facts in his December 12, 1986 Affidavit: "[s]everal of the disclosed

witnesses [identified by number in the affidavit] later state under oath that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit." App.I at 19A-20A. Solely on the basis of speculative inferences from sharply conflicting affidavits supplied by the opposing parties, the judge concluded that petitioner had lied and was consequently liable for the enormous bad faith sanction.

But due process does not permit a finding of bad faith to be made - with credibility determinations, inferences of motive and factual findings - on no basis other than cold affidavits. This Court has expressed serious reservations about such a "trial by affidavit" in the context of a Rule 56 proceeding. See *Anderson*, 477 U.S. at 255 ("Our holding . . . by no means authorizes trial on affidavits.").

By analogy, attorneys in a "bad faith" or Rule 11 proceeding in which sanctions may not only subject them to large financial loss but seriously damage their professional reputation, should have due process protections against "summary judgment" commensurate with those provided to ordinary litigants. Rule 56 may very well have to be molded to apply to sanction proceedings, but its fundamental postulate that summary judgment is not available when there are contested issues of fact is just as applicable to sanction proceedings as to underlying proceedings.

Proceedings under Rule 11 are also subject to constitutional requirements of due process. As stated in the case of *Oliveri v. Thompson*, 803 F.2d 1265 (2nd Cir. 1986), *cert. denied*, 107 S. Ct. 1373 (1987): "[c]ourts should be sensitive to the impact of sanctions on attorneys. They can be economically punishing, as well as professionally harmful: due process must be afforded." 803 F.2d at 1280. A hearing, however, is not always required in a Rule 11 determination. Fed. R. Civ. Proc. 11 advisory committee note. Nevertheless, in this case, both the severity of the sanction and the subjective elements upon which it was based rendered an

oral hearing imperative.

In his initial sanction order the judge stated that plaintiffs' attorney "must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint." Implicit in this charge is the view that petitioner filed the suit for some unstated "improper purpose." Later, in his clarification order, the district court appeared to confirm the bad faith element of petitioner's Rule 11 sanction: "many of the reasons for the bad faith award center around or relate back to signed pleadings that violated Fed. R. Civ. P. 11."

Because these issues of improper purpose, bad faith and credibility are subjective and therefore ambiguous, an evidentiary hearing was warranted: "when a court is asked to resolve an issue of credibility or to determine whether a good faith argument can be made for the legal position taken, the risk of an erroneous imposition of sanctions under limited procedures and the probable value of additional hearing are likely to be greater. *Donaldson*, 819 F.2d at 1561.

No precedent holds that a court may rule on a lawyer's motivation in filing a complaint without hearing testimony, permitting cross-examination and determining credibility when confronted with conflicting affidavits as to the facts. Given the severity and subjectivity of the sanction, the district court should have afforded petitioner a full hearing, complete with confrontation privileges and an opportunity to present argument and supporting evidence.[9]

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[9] The district court's intention to punish petitioner is evident. Accordingly, the punitive sanction of over one million dollars which threatens to bankrupt petitioner is tantamount to a criminal penalty and arguably implicates the due process requirements attendant to criminal contempt proceedings, including a jury trial. "[S]uch sanctions can assume the criminal character of a fine as, for instance, when their amount is grossly

2. The Findings of the District Court and the Panel Were Conclusory and Insufficient as a Matter of Law.

The paucity of the district court's findings makes it impossible to discern whether the court properly exercised its discretion in fashioning a sanction. Particularly in light of the enormity of the sanction, the court should have enunciated the specific findings upon which it based its order. *Roadway*, 447 U.S. at 767; *Rothenberg v. Security Management Co., Inc.*, 736 F.2d 1470 (11th Cir. 1984). Neither the district court nor the panel's opinion contain any clear delineation of the conduct being sanctioned, the factual findings regarding each act, or the application of a particular sanction authority to the sanctioned acts. The factual findings, such as they are, are "mere conclusory statements." *Rothenberg*, 736 F.2d at 1472 ("In a case, such as this one, which has dragged on for more than six years and produced a voluminous record of thousands of pages, such bald assertions provide no meaningful basis for this court to review the ultimate finding of 'bad faith'.").

As indicated above, petitioner's purported "bad faith" was the basis of the entire sanction. However, a bad faith finding is a subjective determination requiring a finding of actual knowledge or scienter. See *White v. General Motors Corp., Inc.*, 908 F.2d 675, 685 (10th Cir. 1990)(". . . the

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disproportionate to the attorney's misconduct. Additional due process safeguards are necessary under those circumstances. Those additional safeguards should parallel the procedures provided for in Rule 42(b)" *Donaldson*, 819 F. 2d at 1563 (Johnson, J., specially concurring). But even if the district court believed a jury trial was not warranted, petitioner was, at a minimum, entitled to an evidentiary hearing where they could present oral testimony to "contest and explain" the sanction contemplated against him. *Id.* at 1563.

sanctioning of a party requires specific findings that the party was aware of the wrongdoing."); *Browning Debenture Holders' Committee v. DASA Corp.*, 560 F.2d 1078, 1089 (2nd Cir. 1977)(finding of bad faith requires personal awareness or responsibility for sanctioned activity). The district court implied that petitioner had committed perjury: "[s]everal of the disclosed witnesses . . . flatly denied the statements he had attributed to them in his affidavit." However in order to hold him liable, the court had to find that the alleged untrue statements were intentional. *Palmer v. BRG of Georgia, Inc.*, 874 F.2d 1417 (11th Cir. 1989)(upholding district court finding that, though party submitted a false affidavit, Rule 11 sanctions not appropriate because court could not determine whether untrue statements were intentional). The court made no such finding, nor could it since there is simply no evidence on the record that could support such a charge.

III. PETITIONER DID NOT VEXATIOUSLY MULTIPLY THE PROCEEDINGS TO WARRANT A SANCTION PURSUANT TO 28 U.S.C. §1927

The district court purported to find a third ground for sanctions in 28 U.S.C. § 1927, which provides that: "Any attorney . . . admitted to conduct cases in any court . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required . . . to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred . . . ." The power to assess sanctions under this provision "is a power which the courts should exercise only in instances of a serious and studied disregard for the orderly processes of justice." *Kiefel v. Las vegas Hacienda, Inc.*, 404 F.2d 1163 (7th Cir.), *cert. denied*, 395 U.S. 908, *reh'g. denied* 395 U.S. 987 (1969). It cannot be said that petitioner Sheehan's conduct has exhibited such disregard for all of the reasons set forth above.

Again, because of the district court's lack of identifiable

findings, petitioner is left to speculate as to the nature of his "crimes." Surely, the mere volume of docket entries in a case against 29 individuals who are actively litigating every discovery issue, without the court's consideration of the necessity or reasonableness of these aspects of the litigation, cannot be used to support this sanction. This is so because Section 1927 does not authorize awarding of the full costs of a case, but rather only those specific excess costs caused by the specific conduct found to be vexatious. *United States v. Associated Convalescent Enterprises. Inc.*, 766 F.2d 1342, 1347 (9th Cir. 1985). The district court's order wholly fails to specify which "excess" costs can be attributed to which alleged "multiplication" of the proceedings and an award of costs for defendants, offensive discovery attack cannot be sustained thereunder. If the district court meant to sanction the appeal of the disclosure order, for instance, its complete failure to parse out any fees associated therewith requires a vacating of the entire award.[10]

By choosing a "broad brush" approach and awarding each defendant his full bill for the entire case under § 1927, the order of the district court is completely at odds with the express statutory provision on which it allegedly is based. When a court imposes sanctions under 28 U.S.C. §1927, or

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[10]If the §1927 sanction was imposed on the basis of petitioner's litigation of his clients' right to protect from discovery by the defendants in a civil RICO case the identities and location of certain witnesses then such a ruling was clear error. This litigation position was directly supported by an *amicus curiae* brief filed by the congressional author of the RICO statute. Furthermore, petitioner offered to turn over the information to the district court *in camera*. Petitioner had also presented to the court evidence that specific witnesses, previously revealed to the defendants, had been harassed and physically threatened. Finally, a magistrate ruled that petitioner's conduct had been undertaken in good faith.

under any other authority, it must sufficiently express the basis for the sanctions imposed in order to identify the excess costs reasonably incurred by the party to whom they will be due. If a trial court imposes sanctions, specific findings are required. There must be an express basis for the imposition of sanctions and an identification of the costs resulting therefrom. Because the person sanctioned is entitled to notice and an opportunity to be heard, the objectionable conduct must be identified sufficiently to make that opportunity meaningful. The reason for the decision must be in a form reviewable by the appellate courts. *Braley v. Campbell*, 832 F.2d 1504, 1513 (lOth Cir. 1987)(*en banc*). Not one of these criteria was met by the district court's order.

IV. IT WAS AN ABUSE OF DISCRETION FOR THE COURT TO BOOTSTRAP IT'S SUMMARY JUDGMENT ORDER INTO AN ORDER FOR SANCTIONS

After unilaterally declaring the plaintiffs' evidence to be non-existent due to the failure of counsel to submit it to the court prior to trial in a court admissible form (as discussed in Argument I above), the district court, thereupon, simply "disappeared" all of the plaintiffs' positive evidence from the record of this case.

Petitioner protests the unjust procedure by means of which the district court "transmuted" actual named witnesses - who had evidence tending to support the plaintiffs' factual allegations - first into witnesses who had no technically "admissible" evidence against the defendants, then into witnesses who had "no evidence whatsoever" against any of the defendants, then into witnesses who never had any such evidence, and finally, into witnesses who never existed at all - and then, on the basis of this final finding, summarily imposed upon plaintiffs' counsel a punitive sanction of over $1 million not only for allegedly filing a lawsuit that simply

failed to "make admissible" the positive evidence which he possessed to justify the filing of his original complaint, but also for allegedly filing a bad faith lawsuit which had no hope whatsoever of producing any evidence to support the complaint through the discovery process.[11]

This procedure represents not just a simple "bootstrapping" of a standard Rule 56 order of summary judgment into an unjustified Rule 11 sanction, as was expressly condemned in *O'Neal v. Dekalb County, Ga.* 850 F.2d 653, 658 (11th Cir. 1988), but indeed, represents a "double-bootstrapping" of a standard Rule 56 order of summary judgment first into an unjustified Rule 11 sanction and then into an unconscionable "bad faith" sanction equal to virtually all of the defendants' costs and attorneys' fees from the very inception of the litigation.

But even assuming the legitimacy of the summary judgment order, the sanction imposed against the petitioner was wholly unwarranted. The district court's opinion granting the summary judgment gave no hint that the court considered the case "frivolous" or deserving of sanctions. Indeed, the opinion was a lengthy, though not exhaustive, analysis of the plaintiffs' evidence which the court refused to consider because it was not in court admissible form. After setting forth its perception of the evidence necessary to establish causation, the court expends over six pages

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[11] This procedure is rendered even more Kafkaesque by the fact that all of these allegedly "knowingly untrue" accusations have been explicitly confirmed by independent governmental investigations in both Costa Rica and the United Stated - resulting in the first degree murder indictment of defendants John Hull and Felipe Vidal (see New York Times, March 1, 1990 "International"; and Washington Post, March 1, 1990, p. A15), the naming of defendant "Per Anker Hansen" as the La Penca bomber "to a certainty," and the indictment of John Hull's RICO enterprise partners by Independent Counsel Walsh.

describing some of the evidence put forth by the plaintiffs. *Avirgan*, 691 F.Supp. at 1371-1377. App.I at 24.29A-25A The opinion acknowledges that the evidence "may establish" certain critical "issues of fact." *Id.*, at 1375.

It is impossible to reconcile this opinion which at least acknowledged the presence on the record of substantial circumstantial evidence supporting plaintiffs' allegations with the court's sanction order (issued over seven months later) finding the case entirely frivolous. Indeed, the court's contentions regarding the "unsubstantiated" and "speculative" nature of plaintiffs' evidence blatantly contradict its earlier Order Granting Summary Judgment.

CONCLUSION

For the foregoing reasons, the petition of Daniel P. Sheehan should be granted.

Respectfully submitted,

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EDITOR'S NOTE

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Nos. 91- _____

In The

Supreme Court of the United States

October Term, 1991

Daniel P. SHEEHAN and THE CHRISTIC INSTITUTE,

Petitioners,

versus

John HULL, Moises Nunez, Jorge Gonzalez, Adolfo Calero, Robert Owen, Thomas Posey, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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Petitioners' Joint Appendix
Volume I

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UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Filed June 18, 1991
Reported as Avirgan v. Hull,
932 F.2d 1572 (11th Cir. 1991)

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

v.

John HULL, Adolfo Calero, Robert Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim, and Richard Secord,
Defendants-Appellees,

Bruce Jones, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, Thomas Posey, John K. Singlaub, Ronald Joseph Martin, James McCoy, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim and Richard Secord,
Defendants-Appellees,

Rene Corbo, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

Daniel P. SHEEHAN and The Christic Institute,
Non-Party-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert Owen, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,
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Rene Corbo, et al.,
Defendants.

Tony AVIRGAN and Martha Honey,
Plaintiffs-Appellants,

Daniel P. SHEEHAN and the Christic Institute,
Non-Party-Appellants,

v.

John HULL, Moises (Dagoberto) Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, Thomas Posey, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,
Defendants-Appellees,

Rene Corbo, et al.,
Defendants.

Nos. 88-5720, 89-5143, 89-5232
and 89-5515.

Appeals from the United States District Court for
the Southern District of Florida.
(D.C. No. JLK-CIV-86-1146)

Michael W. Burnbaum, Coral Gables, Florida; Raul de Cubas of Diaz Silviera and Associates, Coral Gables, Florida; Robert F. Garcia-Esquerro, Miami, Florida; Thomas C. Green and Paul Castellitto of Green & Lankford, Washington, D.C.; Leonard Greenbaum and Thomas Hylden of Sachs, Greenbaum & Taylor, Washington, D.C.; Theodore Klein of Fine, Jacobson, Schwartz, Nash, Block & England, Miami, Florida; Luis S. Konski of Walton, Lantaff, Schroeder & Carson, Miami, Florida; Jack McKay and Jane Sullivan of Shaw, Pittman, Potts & Trowbridge, Washington, D.C.; Joseph Portuondo of Fitzgerald, Portela & Portuondo, Miami, Florida; Edwin R. Smith, Evansville, Indiana; Thomas R. Spencer of Spencer, Bernstein, Seeman & Klein, Miami, Florida; for Defendants-Appellants.

Eugene R. Scheiman, New York, New York; Daniel P. Sheehan of the Christic Institute, Washington, D.C. (Phil Hirschkop, Alexandria Virginia; Joanne Royce and Lanny Sinkin of the Christic Institute, Washington, D.C., with them on the briefs) for Plaintiff-Appellees Avirgan and Honey.

Eugene R. Scheiman, New York, New York; (Joanne Royce and Lanny Sinkin of the Christic Institute, Washington, D.C., with him on the briefs) for Appellee the Christic Institute.

Morton Stavis of Center for Constitutional Rights, New York, New York (Joan Gibbs, Katherine Gorove, and Stephanie Y. Moore of Center for Constitutional Rights, New York, New York with him on the briefs) for Appellee Daniel P. Sheehan.

Before HATCHETT and BIRCH, Circuit Judges, and RONEY, Senior Circuit Judge.

HATCHETT, Circuit Judge.

Two journalists, their lawyers, persons and entities associated with the journalists and lawyers, in this consolidated appeal involving the Nicaraguan Contra affair seek reversal of the district court's orders granting summary judgment against them and imposing sanctions in excess of one million dollars. We affirm the district court.

FACTS

On May 30, 1984, Tony Avirgan and his wife, Martha Honey, appellants, who are American journalists based in Costa Rica and cover Central America for various news agencies, attended a press conference of Contra leader Commandant Eden Pastora at the campground of the Southern Contra Force in La Penca, Nicaragua. About thirty journalists traveled to the guerilla campground. At the press conference, a bomb exploded killing eight people and wounding numerous others. Avirgan and Honey allegedly suffered personal injuries, damages to television camera equipment, loss of business due to the bombing, and loss of consortium. Avirgan and Honey claim that the bombing was the product of a criminal racketeer influenced and corrupt organization (RICO) enterprise consisting of the appellees

with the goal of overthrowing the government of Nicaragua.[1] The appellees include alleged Central Intelligence Agency operatives, military intelligence personnel, arm merchants, mercenaries, and Colombian drug lords. Most of the allegations are based geographically in Nicaragua, but some allegations accuse various appellees of anti-communist operations in Cuba, Southeast Asia, Iran, Libya.

Chief Judge James Lawrence King, in his thorough opinion, summarized Avirgan and Honey's theory of their case as follows:

> It is the theory of plaintiffs' case that the defendants established an enterprise, the purpose of which was to violate the principles espoused in the Neutrality Act and that all of the alleged patterns of racketeering activity were performed to promote the goal of this enterprise. Central to the alleged violations of each subsection of § 1962 is the plaintiffs' purported Neutrality Act enterprise. The plaintiffs allege that in May, 1983 the defendants Francisco Chanes, Moises Nunez, Hector Cornillot, Rene

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[1] The status of persons involved In these cases is as shown below:
Appellants: Tony Avirgan (Plaintiff), Martha Honey (Plaintiff), The Christic Institute, and Daniel P. Sheehan.
Appellees: John Hull, Moises Dagoberto Nunez, Jorge Gonzalez, Adolfo Calero, Robert W. Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Thomas Posey, Rafael Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Albert Hakim, and Richard Secord.
Defendants only: Bruce Jones, Rene Corbo, Francisco Chanes, Ricardo Gris, William Gris, Robert P. Pallais, Hector Cornillot, and Frederico Saenz.
Named as defendants but not served: Felipe Vidal Santiago, Ramon Cecilio Palacio. Amac Galil, Alvaro Cruz, Pablo Escobar, and Jorge Ochoa.

Corbo and Felipe Vidal Santiago established an enterprise. The purpose of the enterprise was to launch a Cuban/American mercenary expeditionary force against the Republic of Nicaragua, from Costa Rica, along the 'Southern Front.'

The plaintiffs also contend that these defendants established a cocaine smuggling operation through Costa Rica to finance the workings of this enterprise in violation of the Neutrality Act. 18 U.S.C. § 960 (1986). It is asserted that the original purpose of these individuals was to assist an indigenous Nicaraguan group, the Revolutionary Democratic Alliance ('ARDE').

The ARDE was engaged in guerilla attacks against Nicaragua under the leadership of Eden Pastora. The plaintiffs maintain that sometime after this original joinder of forces the enterprise decided to remove Pastora as leader of ARDE in order to merge ARDE into alliance with the Honduras based contra group, the Nicaraguan Democratic Force ('FDN') and facilitate its narcotics trafficking in Costa Rica.

Avirgan v.Hull, 691 F.Supp. 1357, 1363-64 (S.D.Fla.1988).

PROCEDURAL HISTORY

On May 29, 1986, Avirgan and Honey filed a complaint in the United States District Court for the Southern District of Florida. Avirgan and Honey's racketeering allegations include the following: the attempted murder of Eden Pastora; the murder of eight persons at the press conference in La Penca; the attempted murder of Avirgan at the La Penca bombing; the trafficking of arms and explosives in violation of state and federal law; the transferring of funds from illegal weapons and explosives dealings; the conspiracies to murder Pastora on two occasions; the conspiracy to kidnap informants - Carlos Rojas Chinchilla and a person identified

only as "David"; the murder of David; the conspiracy to transport cocaine into the United States; and the conspiracy to murder the United States Ambassador to Costa Rica. The primary allegation, however, is that Amac Galil, disguised as a journalist named Per Anker Hansen, detonated the bomb at the La Penca press conference, and acted in concert with the twenty-eight other persons named in the amended complaint.

Avirgan and Honey also allege state law claims which include: battery, loss of consortium, assault, intentional infliction of mental distress, trespass, damage to personal property, and a state RICO claim under Fla.Stat.Ann. § 895.03.

In their amended complaint, Avirgan and Honey specified the relevant time period as May, 1983, through May 29, 1986. Thus, for discovery purposes, the court granted the time limit specified plus six months before the first alleged overt act, which occurred in May, 1983. The district court limited discovery to a four-year period covering the relevant alleged conspiratorial time period of December, 1982, until November, 1986. The district court also limited the subject matter discovery to the purchase or sale of military equipment; weapons; or explosives; transactions in illegal drugs; the operation of the alleged Neutrality Act enterprise; and any action resulting in or causing injury to Avirgan and Honey.

After two years of discovery, several appellees moved for summary judgment alleging that Avirgan and Honey had failed to state a claim under RICO. In addressing this motion, the district court thoroughly analyzed the evidence Avirgan and Honey presented, in order to determine whether they had shown genuine issues of material fact. Finding much of the evidence inadmissible, the district court ruled

that Avirgan and Honey failed to prove that the appellees were the proximate cause of their injuries and granted appellees' motions for summary judgment on the federal and state law claims.[2]

The district court, by a subsequent order, granted appellees' motions for costs and attorney's fees, ruling that the abuse of the judicial process required that Avirgan and Honey make the appellees whole by paying the fees the appellees were forced to spend in defending the lawsuit. Moreover, the district court ruled that liability for costs and fees rests jointly and severally with Avirgan and Honey, Daniel Sheehan (Avirgan and Honey's lawyer) and the Christic Institute.[3]

On appeal, this court consolidated appellants appeals of the district court's (1) grant of summary judgment; (2) the award of attorney's fees and costs; (3) motions for clarification order; and (4) the clarification order.[4]

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[2] Avirgan and Honey do not challenge the grant of summary judgment on the state law claims. As such, we deem those claims abandoned. *Rogero v. Noone* 704 F.2d 518, 529 n. 1 (11th Cir.1983).

[3] The Christic Institute is a tax-exempt law firm which funded the litigation.

[4] The appeal on the merits is 88-5720; the other three appeals are from the district court's orders on fees (89-5143,89-5232, and 89-5515).

On appeal, numerous persons and entities appeared, through brief, as amicus curiae, including: Church of the Brethren, Church Women United, Conference of Major Superiors of Men, Peace Fellowship of the Christian Church (Disciples of Christ), Leadership Conference of Women Religious, the Maryknoll

CONTENTIONS

Avirgan and Honey contend that the district court ruled improperly in granting summary judgment, in issuing certain orders prior to summary judgment, and in denying relief for cost of injury and equipment due to the bombing. Additionally, Avirgan, Honey, the Christic Institute, and Daniel Sheehan challenge the award of costs and attorneys' fees.

The issues presented on appeal are: (1) whether the district court properly granted summary judgment on the ground that the appellants failed to show that the appellees caused their injuries; (2) whether the district court erred in issuing certain orders prior to summary judgment; and (3) whether the district court erred in awarding attorneys' fees and costs to the appellees.[5]

Fathers and Brothers, General Conference Mennonite Church, National Council of Churches of Christ in the U.S.A., Unitarian Universalist Association, the Womens Division of the United Methodist Board of Global Ministries; Professor Melissa Nelken, Professor Carl Tobias, Professor Mary Twitchell, Trial Lawyers for Public Justice, and Public Citizen and Alliance for Justice.

[5] Avirgan and Honey also request damages for injuries and ask that if the case is remanded for further proceedings, the proceeding not be conducted by Chief Judge James L. King. Since we affirm the district court, these issues are moot.

DISCUSSION

1. Summary Judgment

[1,2] Consideration of the district court's grant of summary judgment requires plenary review and application the same legal standards that bound the district court. *Rollins v. TechSouth, Inc.*, 833 F.2d 1525, 1527 (11th Cir.1987). If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Fed. R.Civ.P. 56(e). A nonmoving party, opposing a motion for summary judgment supported by affidavits cannot meet the burden of coming forth with relevant competent evidence by simply relying on legal conclusions or evidence which would be inadmissible at trial. *Fontenont v. Upjohn Co.*, 780 F.2d 1190, 1195 (5th Cir.1986).

The evidence presented cannot consist of conclusory allegations or legal conclusions. *First National Bank of America v. Cities Serv. Co.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 1592, 20 L.Ed.2d 569 (1968).

A. RICO Claim

[3] Avirgan and Honey's RICO claim is founded upon 18

U.S.C. § 1964(c).[6] Thus, they must prove three essential elements: (1) a violation of section 1962; (2) injury to business or property; and (3) that the violation caused the injury. *O'Malley v. O'Neill* 887 F.2d 1557, 1561 (11th Cir. 1989).

Sections 1962(a), (b), and (c) of title 18 make criminally liable those who engage in, or aid and abet another to engage in, a pattern of racketeering activity if they also do the following: invest income derived from the pattern of racketeering activity in the operation of an enterprise engaged in interstate commerce (section 1962(a)); acquire or maintain, through the pattern of racketeering activity, any interest in or control over such an enterprise (section 1962(b)); or conduct, or participate in the conduct of, the affairs of such an enterprise through a pattern of racketeering activity (section 1962(c)). Section 1962(d) makes it a crime to conspire to violate section 1962(a), (b), or (c). [Footnote omitted.]

Pelletier v. Zweifel, 921 F.2d 1465, 1495-96 (11th Cir.1991).

1. Evidence

As to the evidence Avirgan and Honey presented, the district court found:

The plaintiffs have not made a showing of a genuine

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[6] Title 18 U.S.C. § 1964(c) reads as follows:
Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

> issue of material fact with respect to any of their allegations concerning the cause of their injuries. Causation is an essential element of a RICO action. Accordingly, the defendants who have moved are entitled to summary judgment.

Avirgan. 691 F.Supp. at 1377.

[4] Avirgan and Honey argue that they were not obligated to produce evidence gathered during pretrial discovery which demonstrated that Galil had committed the bombing and was a member of the enterprise, that C-4 was an ingredient of the bomb, or that they and their news sources were threatened and had crimes committed against them. We disagree. The evidence Avirgan and Hóney presented is scant almost nonexistent, on the important issue of causation. Avirgan and Honey presented the *La Penca Report*, a publication they prepared, which concludes that Amac Galil, a/k/a Per Anker Hansen caused the bombing. The district court correctly determined that this evidence was inadmissible.

Also, Avirgan and Honey submitted a one-page translation of a five-page document the Costa Rican OIJ prepared. The OIJ, according to Avirgan and Honey, is the Costa Rican equivalent to the United States Federal Bureau of Investigation (FBI). The translation is uncertified, unsigned, and does not conclude that Galil was responsible for the bombing. It merely concludes that debris found at the sire of the bombing matched that of a box Galil carried. This evidence is circumstantial, speculative, and of little weight.

Avirgan and Honey further argue that because none of the appellees disputed Galil's role in the bombing, summary judgment was improper. According to Avirgan and Honey, although some appellees claim that they did not know Amac

Galil or have direct or indirect contact with him, this does not mean that all of the appellees are unassociated with the enterprise. In other words, Avirgan and Honey argue that no one has disproved Galil's existence, or disproved the existence of the enterprise, or disproved Galil's association with the enterprise. Thus, say Avirgan and Honey, the enterprise existed; Galil existed; Galil set off the bomb; and we were injured.

[5] Avirgan and Honey note that this circuit has ruled that a RICO enterprise may be an "amoeba-like" structure or a loose informal association. See *United States v. Cagnina*, 697 F.2d 915, 921 (11th Cir.1983), *cert denied*, 464 U.S. 856, 104 S.Ct. 175, 78 L.Ed.2d 157 (1983). We have so held. Nevertheless, Avirgan and Honey presented no evidence to indicate that Galil committed the bombing or was a part of the alleged enterprise. No admissible evidence was ever produced to show that Galil even existed.[7] The evidence completely failed. Galil was never served with a complaint or scheduled for deposition. All parties realized that responsibility for the La Penca bombing was a key issue on summary judgment. Yet, Avirgan and Honey, after years of discovery, brought forth nothing on the causation issue.

[6] Likewise, without submitting admissible evidence, Avirgan and Honey alleged that the appellees were liable for threats to and the kidnapping of Carlos Rojas Chinchilla and

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[7] At one point, Avirgan and Honey argue that Theodore Shackley's counsel admitted Galil's existence. Shackley's counsel's statement was, "I don't believe that the plaintiffs have any proof that any of the defendants was engaged in the La Penca bombing or connected to the La Penca bombing other than this fellow that they describe as Amac Galil." This statement is not evidence that counsel admitted Galil's alleged role in the bombing.

the murder of "David." According to Avirgan and Honey, Chinchilla and David served as their informants about the bombing. They specifically named Hull, Jones, Corbo, Vidal, Chanes, Nunez, Cruz, Saenz, Posey, Owen, and Palacio as participants in the crimes against David and Carlos, both individually and through agents. Avirgan and Honey assert that only three appellees, Hull, Owen, and Jones, moved for summary judgment.[8] They argue that Owen was in Central America at the time of an execution of a "Sandinista informant" believed to be David. According to Avirgan and Honey, it was Owen's responsibility to demonstrate that the executed Sandinista informant was not David, or prove that he had no knowledge of, or did not condone the execution. It is their theory that the omission of this evidence, which Owen did not produce, should serve as a favorable inference for them. *Lampkin v. Liberia Athene Transport Co., Ltd.*, 823 F.2d 1497, 1499 (11th Cir.1987). This absence of evidence does not result in a favorable inference.

Avirgan and Honey further contend that Hull, Jones, Corbo, Vidal, Chanes, Nunez, Cruz, Saenz, Posey, and Owen threatened to murder them because they connected Hull and Vidal to the threats against their family. Again, theories, allegations, and speculation; but, no evidence.

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[8] The following persons filed motions for summary judgment: Jones, Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero. Delamico, Clines, Hakim, and Secord. Gonzalez filed an untimely summary judgment motion.

Defendants Santiago, Palacio, Galil, Cruz, Escobar, and Ochoa were never served and were dismissed.

Nine defendants did not move for summary judgment: Corbo, Nunez, Chanes, R. Gris, W. Gris, Pallais. Cornillot, Saenz, and Posey. Nunez moved. after the pretrial conference, to vacate the entry of default against him and to quash the service of process.

2. Causation

[7] In a civil RICO action, the plaintiff must prove that the criminal conduct in violation of section 1962 directly or indirectly injured the plaintiff's business or property. *Haroco v. American Bank and Trust Co. of Chicago,* 747 F.2d 384, 398 (7th Cir.1984), *aff'd*, 473 U.S. 606, 105 S.Ct. 3291, 87 L.Ed.2d 437 (1985).

[8] Avirgan and Honey emphasize that the district court was required to provide them with notice of its intention to consider the causation issue, and it did not do so. We reject this argument. Appellees' numerous summary judgment motions presented the causation issue. For example, Owen's summary judgment motion asserted that no evidence supported the theory that Galil was linked to the bombing or to the alleged enterprise. In this motion, Owen also challenged whether any evidence supported the kidnapping of Chinchilla, the kidnapping and threatening of David, the threats to murder Chinchilla, David, Avirgan, Honey), and the attempted assassination of Pastora.

In practically every motion for summary judgment, the appellees asserted that they had no involvement, directly or indirectly, in the La Penca bombing, that they were not the cause of any of the injuries, and that they were not and had never been members of an alleged enterprise. The appellees' affidavits, answers to interrogatories, and depositions put Avirgan and Honey on notice that causation was a principal issue. Consequently, the district court acted properly in granting summary judgment on the ground that Avirgan and Honey failed to prove that the appellees caused the injuries.

[9] Avirgan and Honey's additional allegation is that Galil

used C-4 explosives in the La Penca bombing. For this assertion, they rely upon the deposition of Fernando Cruz Castro. The district court found that Avirgan and Honey evidently asked Cruz Castro to recall a letter or some other writing which suggested that Per Anker Hansen (Galil) committed the La Penca bombing. Cruz Castro's affidavit seeks to recite the contents of the letter or other writing from memory. The district court found, and we agree, that Cruz Castro's affidavit was not admissible. No other evidence linked Galil or any appellee to C-4 explosives.

B. Discovery

Avirgan and Honey also contend that the district court erred in granting summary judgment because the appellees had not complied with discovery requests or the court's orders compelling discovery. The record does not support this contention. All appellees, except Corbo, submitted affidavits, answered interrogatories, and/or provided sworn depositions denying responsibility, directly or indirectly, for the La Penca bombing. Owen, Singlaub, and Calero gave lengthy and complete depositions; Hull and Secord gave incomplete depositions because of Avirgan and Honey's delay in setting dates; Posey, Quintero, and Hakim invoked their fifth amendment privilege; Shackley and Clines were never noticed for deposition. All appellees served with interrogatories responded, and all appellees who moved for summary judgment submitted sworn affidavits. Furthermore, Avirgan and Honey had the benefit of public information generated by the Iran/Contra affair, including the extensive testimony of Secord, Hakim, Owen, Singlaub, Calero, and numerous other witnesses in public hearings.

[10] In this RICO proceeding which involves some alleged criminal activity, Avirgan and Honey should have anticipated

that some appellees would impose their fifth amendment rights. Invocation of the amendment privilege did not give rise to any legally cognizable inferences sufficient to preclude entry of summary judgment. The negative inference, if any, to be drawn from the assertion of the fifth amendment does not substitute for evidence needed to meet the burden of production. *United States v. Rylander*, 460 U.S. 752, 103 S.Ct. 1548, 75 L.Ed.2d 521 (1983). Most importantly, Avirgan and Honey did not demonstrate that further discovery would have led to evidence which would have precluded summary judgment based on causation.[9]

II. Orders Prior to Summary Judgment

[11] Avirgan and Honey also contend that the district court erred in the issuance of orders prior to summary which restricted discovery and denied them the right to file a third amended complaint. We review these claims under an abuse of discretion standard. *Edward Leasing Corp. v. Uhlig and Associates, Inc.* 785 F.2d 877 (11th Cir.1986).

A. Discovery Limitations

Avirgan and Honey contend that the district court's order restricting discovery to evidence for the period 1983 through

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[9] Avirgan and Honey had two years to conduct discovery and seven and one-half months advance warning of the discovery cut-off date. Knowing this, they took absolutely no discovery during the first nine months after filing the case and little more until January, 1988. During the final 4 1/2 months of discovery, Avirgan and Honey filed 153 deposition notices. It is clear that Avirgan and Honey's actions caused delay in discovery, not the appellees.

1986 of only one venture of the alleged RICO enterprise, and only those subjects related to the La Penca bombing, deprived them of an opportunity to conduct adequate discovery.

[12] Despite these assertions, prior to filing the first complaint, Avirgan and Honey boasted of a two-year investigative period, and after filing enjoyed an additional two years of discovery. Where a significant amount of discovery has been obtained, and it appears that further discovery would not be helpful in resolving the issues, a request for further discovery is properly denied. *Aviation Specialties, Inc. v. United Technologies Corp.*, 568 F.2d 1186, 1189 (5th Cir.1978).

[13] Thus, the time and subject matter restrictions imposed by the district court did not deprive Avirgan and Honey of an opportunity to conduct adequate discovery. Moreover, the order did not prohibit discovery into causation, which was the dispositive issue. The district court has wide discretion in determining the scope and effect of discovery, and it did not abuse its discretion when it imposed time and subject matter restrictions in this case. *See Amey, Inc. v. Gulf Abstract and Title, Inc.*, 758 F.2d 1486, 1505 (11th Cir.1985), *cert. denied*, 475 U.S. 1107, 106 S.Ct. 1513, 89 L.Ed.2d 912 (1986).

B. Third Amended Complaint

[14] Avirgan and Honey also challenge the district court's denial of their motion to file a third amended complaint. Avirgan and Honey acknowledge that the third amended complaint would not have altered the claims against the appellees or added new parties, causes of action, or additional relief. Consequently, a third amended complaint was unnecessary. Avirgan and Honey needed proof, not

more pleadings. The district court did not abuse its discretion in denying the filing of a third amended complaint.

III. Attorneys' Fees

In its order awarding costs and attorney's fees, the district court stated:

> The attorneys for the plaintiffs, The Christic Institute, must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint. Plaintiffs' lead counsel, Daniel Sheehan, supplemented the complaint with a detailed affidavit outlining the purported testimony of seventy-nine witnesses who Mr. Sheehan stated had factual knowledge that these defendants set and exploded the bomb that caused plaintiff's injuries.
>
> The seventy-nine witnesses were identified only by number. Plaintiffs' counsel refused to identify the names and addresses of the vast majority of the seventy-nine witnesses until ordered to do so by the court. Plaintiffs appealed the order requiring them to disclose the identities of the witnesses. These actions by plaintiffs and their counsel prevented the defendants from taking depositions of these witnesses, and delayed orderly discovery for many months.
>
> After all the appeals were exhausted and plaintiffs complied with the order to reveal the names of their witnesses, the reason for the plaintiffs' adamant refusal became apparent. Specifically, the names and identities of approximately twenty of the seventy-nine witnesses were totally unknown to Mr. Sheehan or the plaintiffs. Several of the disclosed witnesses later stated under oath

> that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit. The remaining witnesses did not furnish any statements that would be admissible. Much of the testimony of these witnesses involved conversations they allegedly had with other people, which is the hearsay testimony inadmissible at a trial.

Avirgan v. Hull, 705 F.Supp. 1544, 1545 (S.D.Fla.1989).

Avirgan and Honey do not dispute the district court's statements. The other appellants, in the fee portion of the case, do not dispute the statements.

The district court awarded costs to the appellees pursuant to Federal Rule of Civil Procedure 54(d), and 28 U.S.C. § 1920, which lists the items that may be reimbursed as costs.[10]

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[10] Federal Rule of Civil Procedure 54(d) provides in pertinent part:

> Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs.
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> Title 28 U.S.C. § 1920 provides:
>
> Taxation of costs
>
> A judge or clerk of any court of the United States may tax as costs the following:
>
> (1) Fees of the clerk and marshal:
>
> (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case:
>
> (3) Fees and disbursements for printing and witnesses:
>
> (4) Fees for exemplification and copies of papers necessarily obtained for use in the case:
>
> (5) Docket fees under section 1923 of this title:

Avirgan and Honey argue that what the attorneys "must have known" is not the proper standard for the grant of attorneys' fees, but is the standard for the imposition of sanctions. Thus, in their opinion, the district court impermissibly "guised its Rule 11 sanctions as a grant of summary judgment."

Sheehan could not have reasonably believed at the time of the filing of the complaint and the signing of the affidavit that the complaint was well-grounded in fact.[11] Particularly is this true of the affidavit with its unknown, nonexistent, deceased sources, its fabricated testimony, and the deceptive style used to mask its shortcomings. It is obvious that if the

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(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

[11] Federal Rule of Civil Procedure 11. In pertinent part provides:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

appellants knew (must have known) prior to filing this lawsuit that they had no competent evidence, then, this complaint was not well-grounded. Additionally, the district court stated in its order granting attorney's fees and costs that Sheehan's affidavit was the impetus for the two years of discovery. Yet, this discovery did not yield any witnesses who could link the alleged criminal enterprise to the bombing.

[15,16] In its clarification order, the district court explained that Daniel Sheehan, as lead counsel, and the Christic Institute, as the official law firm, were liable pursuant to the bad-faith exception, 28 U.S.C. § 1927, and Federal Rule of Civil Procedure 11, while Avirgan and Honey, as willful participants in Sheehan's litigation strategy, were liable under the bad-faith exception.[12] 125 F.R.D. 189. A court may assess attorney's fees against litigants, counsel, and law firms who willfully abuse judicial process by conduct tantamount to bad faith. *Roadway Express Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). On this record, we have no difficulty in finding that these appellants unreasonably and vexatiously multiplied these proceedings.[13]

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[12] Title 28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

[13] At oral argument, appellants admitted they had spent more than $2 million on this case although, under the best scenario, they did not expect to collect half that amount.

It is well established that:

> Although a litigant proceeding in good faith has a right to use civil discovery in attempts to prove the existence of a colorable claim for relief, filing a lawsuit is not a gratuitous license to conduct infinite forays in search of evidence. When it becomes apparent that discoverable evidence will not bear out the claim, the litigant and his attorney have a duty to discontinue their quest.

Collins v. Walden, 834 F.2d 961, 965 (11th Cir.1987). Since Sheehan, the Christic Institute, Avirgan, and Honey chose not to abandon this case, the district court properly awarded attorney's fees and costs to the appellees.

[17] Furthermore, the district court's order does not infringe upon the appellants' right of access to the courts, or first amendment rights of free association, or Sheehan's professional obligation to represent clients zealously. Status as a public interest law firm or the nature of a claim does not confer immunity from attorneys' fees for bringing and maintaining frivolous lawsuits. *See Roadway Express*, 477 U.S. at 762, 100 S.Ct. at 2462; *Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986). Accordingly, we affirm the district court's award of attorney's fees and costs.

CONCLUSION

Accordingly, we affirm the judgment of the district court.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1146-CIV-KING

Entered June 23, 1988
Reported as Avirgan v. Hull,
691 F.Supp 1357 (S.D.Fla. 1989)

Tony AVIRGAN, and Martha Honey,
Plaintiffs,

vs.

John HULL, Bruce Jones, Rene Corbo, Felipe Vidal, Moises Dagoberto Nunez, Francisco Chanes, Ramon Cecilio Palacio, Ricardo Gris, William Gris Roger Lee Pallais, Amac Galil, Hector Cornillot, Jorge Gonzalez, Adolfo Calero, Alvaro Cruz, Frederico Saenz, Robert W. Owen, John K. Singlaub, Ronald Joseph Martin, Sr., James McCoy, Thomas Posey, Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines Theodore Shackley, Albert Hakim, Richard Secord, Pablo Escobar, and Jorge Ochoa,

Defendants.

OPINION GRANTING SUMMARY JUDGEMENTS

The thundering explosion of a bomb shattered the evening air at the river bank camp of the Southern Contra Force led by Commandante Eden Pastora. A group of

approximately 30 journalists had travelled for hours by canoe, up a steaming jungle river to reach the guerilla camp known as La Penca.

Plaintiffs, one of whom is a journalist who survived the explosion that left eight dead and numerous wounded, accuse the 29 defendants of causing this bombing. They alleged that this bombing was only one act of criminal RICO enterprise consisting of all of the defendants whose purpose was to overthrow the Government of Nicaragua. Plaintiffs seek damages for their personal injuries resulting from the bombing and for interference with their subsequent investigation of the bombing tragedy.

The Plaintiffs are reporters who, while working for various news agencies, cover Central America. As part of this assignment, the Plaintiff Tony Avirgan covered the La Penca press conference held by the Contra leader Eden Pastora.

All defendants deny plaintiffs' allegation of the existence of a RICO conspiracy or any involvement with the bombing and assassination attempt. Thirteen defendants[1] have moved for summary judgment on the basis

[1] The following defendants have either in fact, or through stipulation of counsel, timely filed motions for summary judgement: Jones, Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, QUintero, Delamico, Clines, Hakim, and Secord. The defendant Gonzalez filed an untimely summary judgement motion to which the plaintiffs objected.

Six defendants were never served and were dismissed. These are Vidal, Palacio, Galil, Cruz, Escobar, and Ochoa.

Nine defendants have not moved for summary judgement. They

that plaintiffs, after all discovery has been concluded, have failed to establish that the alleged assassination attempt was connected in any way with these defendants or that they caused any loss or injury to the plaintiffs. These Defendants include alleged Central Intelligence Agency operatives, military intelligence personnel, mercenaries, arm merchants and Colombian drug lords. The principal allegations of the complaint focus on Nicaragua, but it also touches upon some alleged anti-Communist operations in Cuba, Southeast Asia, Iran and Libya.

I. The Conspiracy Allegation of the Complaint and the Order Setting Guidelines for Discovery

The plaintiffs specified May 1983 as the commencement of the alleged conspiracy and its continuance through the filing of the original complaint on May 29, 1986. Each and every allegation pertaining to the La Penca bombing and those matters surrounding the alleged involvement of the defendants in the events then taking place in Nicaragua (set forth in paragraphs 38 to 74 of the amended complaint of October 3, 1986) are alleged to have occurred between May 1983 and May 29, 1986. See Amended Complaint pp. 13-25.

The court, after hearing in oral argument the respective positions of the parties, established limitations and guidelines for discovery on July 30, 1987. The limitation was both to time and subject matter. The time limit was the time specified by plaintiffs in their amended complaint as being the time frame of the alleged conspiracy plus six months

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are Corbo, Nunez, Chanez, R. Gris, W. Gris, Pallais, Cornillot, Saenz, and Posey. Nunez has moved, after the pre-trial conference, to vacate the entry of default judgement against him and quash the service of process made to him.

before the first alleged overt act of May 1983. The parties were limited in their discovery to a four year period covering the relevant alleged conspiratorial time period of December 1982 until November 1986. The subject matter limitation revolved around discovery arising out of the alleged events in Central America, the purchase or sale of military equipment, weapons or explosives, transactions in illegal drugs, the operation of the alleged Neutrality Act enterprise and any action resulting in or causing any injury to the plaintiffs, specifically including the La Penca bombing. Full and complete discovery for the time and subject matter alleged by the plaintiffs has been permitted.

The plaintiff's contend that they should have been permitted to conduct worldwide discovery concerning the activities of the defendants prior to December 1982 in Cuba, Southeast Asia, Iran, and Libya. Some of these events occurred as far back as 1959.

Plaintiff's are bound by the allegations of their complaint wherein they designated the date of commencement of the enterprise as May 1983. If the plaintiffs cannot demonstrate by admissible and competent proof that these defendants injured them as alleged in the complaint, then they have no case cognizable under the RICO Statute and no right to discovery pre 1982. Absent such a showing, it is completely immaterial to any issue in this law suit whether the defendants were, or were not, involved in some other enterprise at some other time in Cuba, Southeast Asia, Iran or Libya. To have permitted them to inquire into every facet of the lives of the defendants for the past thirty years, without first requiring plaintiffs to show that defendants injured the plaintiff at the La Penca bombing would be wrong.

The defendant Shackley has twice sought summary

judgment upon the basis that no evidence had been developed during the discovery phase of this litigation to sustain any of the allegations brought by the plaintiffs against him. In each instance the plaintiffs defended on the basis that additional time for discovery was required and that Mr. Shackley's motions were premature since the parties had until the pretrial conference date within which to complete all discovery. The court denied these motions, agreeing with plaintiffs that they should have up until the cutoff of all discovery (the pretrial conference date) within which to adduce all relevant facts.

The plaintiffs have been given the broadest possible time for discovery of the facts relevant to the issues relating to the La Penca bombing, the events of Nicaragua and the overt acts alleged in the amended complaint. The plaintiffs have had two years to develop facts to support the allegations of their

complaint, during which over 20 depositions have been taken, dozens of sets of interrogatories propounded and numerous affidavits filed.

II. The Causes of Action

The complaint sets forth eight causes of action. The gravamen of these counts is one claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968 (1986). The complaint also sets forth seven state claims, six arising under Florida common law and one under the Florida RICO statute.

A. The RICO Claim

The core of the Plaintiffs complaint rests upon 18 U.S.C. § 1964(c), which has been termed civil RICO. This section

provides

> (c) Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefore in any appropriate United States District Court and shall recover threefold damages he sustains and the cost of the suit including a reasonable attorneys fee.

From this language, the Plaintiff must prove three essential elements. See Wilcox Development Company v. First Interstate Bank of Oregon, 97 F.R.D. 440-447 (D.Or. 1983). The first element is a violation of 18 U.S.C. § 1962. The second requirement is causation; that is, a direct injury of the plaintiffs from such violation. The third requirement is damages sustained by the Plaintiffs. Id. at 446.

Title 18, U.S.C. § 1962 establishes four violations. A Defendant violates § 1962(a) if that person receives any income derived directly or indirectly from a pattern of racketeering activity and uses or invests directly or indirectly any part of this income or the proceeds of this income to acquire any interest in or establish or operate an enterprise that is engaged in or the activities of which effect interstate or foreign commerce. A defendant violates § 1962(b) by acquiring or maintaining through a pattern of racketeering activity any interest in or control of any enterprise which is engaged in or the activities of which affect interstate or foreign commerce. A defendant violates § 1962(c) if that defendant is employed by or associated with any enterprise engaged in or the activities of which effect interstate or foreign commerce and that defendant conducts or participates directly or indirectly in the conduct of such enterprise's affairs through a pattern of racketeering activity. A defendant violates § 1962(d) if he conspires to violate any of the provisions of subsection (a), (b) or (c).

The three essential terms of § 1962, an enterprise, a pattern, and racketeering activity, are defined in § 1961. An enterprise "includes any individual, partnership, corporation, association or other legal entity and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(1)(4). Any pattern of racketeering activity "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years, excluding any period of imprisonment after the commission of a prior act of racketeering activity". 18 U.S.C. § 1961(1)(5). Racketeering activity is defined by reference to numerous federal and state felonies as delineated by statute or common law. 18 U.S.C. § 1961(1)(a)-(d).

In its generic form the causation requirement is relatively straight forward. Section 1964(c) only requires that the plaintiff be injured by reason of a violation of § 1962. Clearly, the statute imposes a proximate cause requirement on the plaintiffs. See Horaco v. American Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (7th Cir. 1984), aff'd, 105 S. Ct. 3291 (1985). This simply requires that the criminal conduct in violation of § 1962 must directly or indirectly have injured the plaintiffs' business or property. Id.

With respect to the manner in which a violation of a particular subsection of § 1962 causes the Plaintiff's injury, the analysis becomes complicated. As with all causation issues, the central focus must be placed upon how tenuous the causation link can or should be. This question varies from one subsection of § 1962 to another.

Two views exist with respect to causation under § 1962(a). The first view requires that the defendants' injury be caused by the use or investment of the income derived through the pattern of racketeering activity. See Eastern

Federal Credit Union v. Pete Markick Mitchell & Co., 639 F.Supp. 1532 (D. Mass. 1986); Heritage Insurance Co. v. First National Bank of Cicero, 629 F.Supp. 1412 (N. Ill. 1986). The second view is broader. Under this analysis a plaintiff's injury may be caused by the operation of the enterprise in which the defendant invested the proceeds derived from the pattern of racketeering activity. See Blue Cross of Western Pennsylvania v. Nardone, 680 F.Supp. 195 (W. D. Penn. 1988).

The analysis of Judge Spencer in Nardone is correct. The language of § 1962(a) prohibits the use or investment of the income or proceeds derived from a pattern of racketeering "in the acquisition of any interest in or the establishment or operation of any enterprise...". This language indicates the intent of Congress to reach all situations where someone may benefit from conducting a pattern of racketeering activity. Accordingly, a defendant's conduct can injury a RICO plaintiff if that plaintiff is injured by the use or investment of income or proceeds derived from the pattern or, if that plaintiff is injured by the operation of the enterprise in which the defendant used or invested the income or proceeds. This construction is consistent with the dictate of Congress to liberally construe the RICO statute. See Sedima, S.P.R.L. v. Imrex Co., Inc., 105 S.Ct 3275, (1985).

The causation link of § 1962(b) is direct. The plaintiff must be injured by the defendant's pattern of racketeering activity, that was used to either acquire or maintain any interest in or control of, any enterprise. Accordingly, the plaintiff must be injured by the pattern of racketeering activity committed by the defendant.

The causation requirement for § 1962(c) is more complicated. Initially, the plaintiff needs to be injured by

the pattern of racketeering activity. The determination of which defendant actually caused the plaintiff's injury is more difficult.

Mere association with a RICO enterprise is not enough to establish liability. See Nassau Suffolk Ice Cream v. Integrated Resources, 114 F.R.D 684, (S.D.N.Y. 1987). The statute requires that the defendant's participation be in the conduct of the affairs of a RICO enterprise. Id. at 691. The Second Circuit has found that a party conducts a racketeering activity when the party is either able to commit the predicate offenses solely by virtue of his position in the enterprise, or involvement or control over the affairs of the enterprise, or the predicate offenses are related to the activities of that enterprise. See United States v. Scotto, 641 F.2d 47, 54 (2d. Cir 1980), cert. denied, 452 U.S. 961 (1981).

The causation link, therefore, requires a showing that the plaintiff was injured as a result of the conduct of the enterprise by the defendant. At the very least this requirement mandates a showing that the defendant was a member of the enterprise, and that the enterprise conducted the racketeering activity that injured the plaintiff.

All injuries are not necessarily remedied by RICO. In this Circuit a plaintiff must make a showing that it has suffered injury to its property or business. See Grogan v Platt, 835 F2d 844 (11th Cir. 1988).

As this court found in its January 30, 1987 order denying motions to dismiss the second amended complaint, plaintiffs had sufficiently alleged a cause of action under RICO. Because at the summary judgment stage a plaintiff must make a showing that there is a genuine issue of material fact with respect to the allegations made in the complaint, the court now reviews the allegations made. In so doing the court will start with the injury requirement and then proceed

to the violations of § 1962.

Tony Avirgan is alleged to have suffered personal injury, damage to his television camera equipment, and loss of business by reason of the bombing and the defendants pattern of racketeering activity committed thereafter.

The plaintiff alleges that these injuries were the result of the acts of all these defendants. The plaintiff alleges that Per Anker Hansen a/k/a Amac Galil, actually placed and exploded the bomb at the La Penca conference while hired by an enterprise consisting of all the defendants. This enterprise, it is alleged, also threatened to kidnap and murder "David" and Carlos Rojas Chinchilla. These individuals had been giving information about the bombing to plaintiffs. See Second Amended Complaint, paragraphs 53 and 54. The plaintiffs further allege that the defendants, members of the enterprise, have threatened to murder both of them. Second Amended Complaint, paragraph 55. While asserting liability against all, those defendants alleged to be specifically responsible for the threats and other acts occurring after the La Penca bombing are Hull, Vidal, Chanes, Nunez, Cruz, Saenz, Posey and Owen.

Plaintiffs maintain that the defendants have violated various subsections of 18 U.S.C § 1962. It is the theory of plaintiff's case that the defendants established an enterprise, the purpose of which was to violate the principles espoused in the Neutrality Act and that all of the alleged patterns of racketeering activity were performed to promote the goal of this enterprise. Central to the alleged violations of each subsection of § 1962 is the plaintiffs' purported Neutrality Act enterprise. The plaintiffs allege that in May, 1983 the defendants Francisco Chanes, Moises Nunez, Hector Cornillot, Rene Corbo and Felipe Vidal Santiago established an enterprise. The purpose of the enterprise was to launch

a Cuban/American mercenary expeditionary force against the Republic of Nicaragua, from Costa Rica, along the "Southern Front."

The plaintiffs also contend that these defendants established a cocaine smuggling operation through Costa Rica to finance the workings of this enterprise in violation of the Neutrality Act. 18 U.S.C. § 960 (1986). It is asserted that the original purpose of these individuals was to assist an indigenous Nicaraguan group, the Revolutionary Democratic Alliance ("ARDE").

The ARDE was engaged in guerilla attacks against Nicaragua under the leadership of Eden Pastora. The plaintiffs maintain that sometime after this original joinder of forces the enterprise decided to remove Pastora as leader of ARDE in order to merge ARDE into alliance with the Honduras based contra group, the Nicaraguan Democratic Force ("FDN") and facilitate its narcotics trafficking in Costa Rica.

According to the complaint, the defendants Vidal and Corbo travelled to Costa Rica in May of 1983 to meet with defendants John Hull and Bruce Jones at Hull's ranch.

It was on this occasion that Hull and Jones, who allegedly had participated in anti-Nicaraguan military activities with the ARDE, joined the Neutrality Act enterprise and participated in the alleged decision to overthrow Pastora's leadership of the ARDE.

Plaintiffs further contend that in August of 1983 defendants Vidal, Nunez and Corbo, Cornillot, Chanes, Hull and Jones recruited the noted Medellin cocaine cartel members Pablo Escobar and Jorge Ochoa.

Avirgan and Honey assert that Ochoa and Escobar joined the enterprise and agreed to provide hundreds of pounds of Columbian cocaine in order to finance the activities of the enterprise in Costa Rica and Nicaragua.

Between December 1983 and February 1984 the defendants Jorge Gonzalez, Ramon Cecilio Palacio, Ricardo Gris, William Gris Adolfo Calero allegedly joined the Neutrality Act enterprise for the purpose of accomplishing the murder of Eden Pastora.

The plaintiffs allege that the enterprise sent the defendants Ricardo Gris and William Gris to Chile where they met and hired the defendant Amac Galil to murder Eden Pastora. The plaintiffs contend that the purpose of this action was to take over the leadership of ARDE.

Between March 1984 and May 1984 the plaintiffs contend that several other significant and important figures in the Iran Contra affair joined this enterprise. James McCoy, Mario Delamico and Ronald Joseph Martin, Sr. are alleged to have joined the enterprise. Avirgan and Honey believe these three defendants unlawfully purchased, through both the defendant McCoy's business (R&M Equipment, Inc.) and defendant Martin's business (Tamiami Gun Shop), arms, C-4 explosives, ammunition and military equipment. The plaintiffs maintain .that these weapons were intended to be used by the enterprise for terrorist activities, murder and arson. Also during this time, the plaintiffs contend that the defendants Theodore Shackley, Thomas Clines, Richard Secord, Albert Hakim and Rafael "Chi Chi" Quintero joined the enterprise and purchased and transported arms and explosives through their businesses the Orca Supply Company and CSF Investments Ltd. John K. Singlaub and Robert Owen allegedly joined the enterprise and operated through four organizations: Gray & Co., IDEA, Inc., the United

States Council on World Freedom, and the World Anti-Communist League. The plaintiffs believed these organizations provided money for explosives and arms to be used in Nicaragua.

Sometime around the beginning of May 1984, the enterprise focused in on its planned assassination of Eden Pastora. The plaintiffs contend that the defendants Roger Lee Pallais, Frederico Saenz and Alvaro Cruz planned the attack on the Pastora press conference intending that members of the press be injured and the government of Nicaragua blamed, so as to achieve the dual purpose of attracting greater negative publicity against the government of Nicaragua and eliminating Pastora.

On May 30, 1984 the plaintiffs allege the defendant Galil (a/k/a Hansen) acting as an agent of the enterprise, placed and detonated a bomb at the press conference held by Eden Pastora at La Penca, Nicaragua. Tony Avirgan was injured and his camera equipment destroyed when this bomb exploded. Pastora survived the blast but six of his soldiers and three civilian journalists did not. A number of people, including Pastora, were seriously injured.

The next activity occurred in December of 1984, when plaintiffs allege Thomas Posey of the Civilian Material Assistance ("CMA") joined the enterprise and met with Vidal, Corbo, Hull and Owen in Houston and Miami to form a second conspiracy to murder Eden Pastora.

Avirgan and Honey further allege that between December 1984 and July 1985 the defendants Corbo, Vidal, Hull, Jones, Posey, Palacio, Pallais, Cruz and Saenz conspired to murder the United States Ambassador to Costa Rica, Lewis Tambs. C-4 explosives were to be placed in an electrical box at the U.S. Embassy in San Jose, Costa Rica

with the operation financed by monies received from the defendant Escobar's drug operations.

Between May and July 1985 the enterprise allegedly kidnapped and murdered plaintiffs' informant news source, "David". This man was an employee of the enterprise who gave plaintiff Avirgan information concerning the purpose and methods of the enterprise. A second news source of the plaintiffs Carlos Rojas Chinchilla, who helped the plaintiffs communicate with David, was allegedly kidnapped and threatened.

Finally, the plaintiffs allege that the activities of the enterprise continue to this present day with threats directed against them personally and with the continued smuggling of cocaine into the United States from Costa Rica.

Central to the alleged violations of § 1962 are the contended acts of racketeering. The plaintiffs allege that 37 types of racketeering activity were carried out by these defendants. Because the type of racketeering activity carried out by each defendant varies greatly, the court will discuss these allegations in detail.

The first alleged act of racketeering activity was the attempted murder of Eden Pastora. The plaintiffs contend that pursuant to this crime of violence the defendants Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim and Secord engaged in foreign travel and communications in violation of 18 U.S.C. § 1952(a)(2).

The second act of racketeering activity was the murder of the eight persons at the press conference where the attempted assassination of Eden Pastora occurred. Plaintiffs contend that Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim and Secord

engaged in foreign travel and communications in violation of 18 U.S.C. § 1952(a)(2) pursuant to this end.

The third act of racketeering activity allegedly involves the same La Penca bombing and the attempted murder of the plaintiff Avirgan. Pursuant to this crime the same defendants engaged in foreign travel and communication in violation of the same provisions.

The following acts of racketeering activity are alleged to have been committed only by the defendants Hull and Owen:

the kidnap of Carlos Rojas Chinchilla in violation of 18 U.S.C. § 1951(a);
the kidnap and threatened violence against David in violation of 18 U.S.C. § 1951(a);
the threatened murder of Carlos Rojas Chinchilla in violation of 18 U.S.C. § 1951(a);
the threats to murder David in violation of 18 U.S.C. § 1951(a);
the murder of David in violation of 18 U.S.C. § 1951(a);
the threats to murder plaintiff Avirgan in violation of 18 U.S.C. § 1503 and 1951(a);
the threats to murder plaintiffs Honey and both plaintiffs' children and office employees in violation of 18 U.S.C. § 1503 and § 1951(a);
the participation in narcotics trafficking in violation of 18 U.S.C. § 1952(a) and the transfer of proceeds from narcotics trafficking in violation of 31 U.S.C. § 5311 to 5312.

The plaintiffs next allege that the defendants Owen, Hull, Calero, Singlaub, Shackley, Martin, McCoy, Quintero, Delamico, Clines, Hakim, and Secord trafficked in arms and explosives in violation of state and federal law including 18

U.S.C. §§ 842(a)(3) and 922(b)(5).

The plaintiffs next contend that defendants Martin, Secord, Shackley, Clines, Hakim and McCoy, transferred funds derived from illegal dealing in weapons and explosives in violation of 31 U.S.C. §§ 5311 to 5322.

The plaintiffs next contend that the defendants Owen, Hull, Calero, conspired on two occasions to murder Eden Pastora.

Plaintiffs then contend that defendants Hull and Owen conspired to kidnap both Carlos Rojas Chinchilla and David, and to murder David. These two defendants are also alleged to have conspired to transport cocaine and other illegal drugs into the United States.

The plaintiffs then contend the defendants Martin, Quintero, Delamico, Clines, Shackley, Secord, Hakim and McCoy conspired to facilitate the transport of cocaine into the United States by accepting the proceeds from illegal sales of narcotics in payment for illegal arms shipments.

The plaintiffs next contended the defendant Hull conspired to murder the United States ambassador to Costa Rica by exploding a bomb at the United States Embassy in Costa Rica.

Plaintiffs conclude the description of the types of racketeering activity by alleging joint participation in several criminal adventures that they contend shows an enduring pattern of joint racketeering activity through a continuity of relationship between the defendants. A description of these criminal ventures follows.

The first criminal venture is alleged to have occurred

between June 1961 and July 1962. The defendants Shackley, Clines and Quintero are alleged to have been associated together in setting up a terrorist expeditiary force to launch illegal actions against Cuba. The plaintiffs contend that in July 1962 organized crime figures Santo Trafficante, Sam Giancana and John Rosselli joined this group to perform political assassinations in Cuba.

The second criminal venture is alleged to have begun in 1962 and ended in 1975. Shackley is alleged to have been involved in political assassinations and the heroin trade in Laos with Clines working as an associate of Shackley in these operations. In 1966 Singlaub and Secord allegedly joined with Shackley and Clines to establish a political assassination operation based in Laos, Thailand and Cambodia.

The third criminal venture is alleged to have been carried out by Shackley, Singlaub, Clines and Secord in 1966 and 1967. Plaintiffs allege that these defendants set up the Asian Anti-Communist League which cooperated with other groups to establish a political assassination enterprise to operate in South Korea and Taiwan. Plaintiffs allege that this organization became the World Anti-Communist League and is alleged to have engaged in assassinations, illegal export of arms and explosives and other criminal activities throughout the world.

The fourth criminal venture is alleged to have occurred in 1972. The defendants Shackley and Clines are alleged to have participated in the planning of arms shipments and assassinations in Chile.

The fifth criminal venture is alleged to have occurred in 1973. Plaintiffs allege defendant Shackley worked with Clines and Secord to set up the Nugan-Hand Bank in Australia. This bank is alleged to have been the conduit for

funds from the Southeast Asian heroin trafficking to terrorist activities including assassinations, gun running, and trafficking in explosives.

The sixth criminal venture is alleged to have occurred between 1976 and 1978. Defendants Shackley, Clines, and Quintero are alleged to have worked with others to establish an operation for illegally providing arms and explosives for political assassinations in Iran and Libya.

The seventh venture is alleged to have occurred in 1978 where defendants Secord, Shackley and Clines are alleged to have embezzled money from the United States Department of Defense Foreign Military Sales Program in order to finance terrorist operations and to illegally purchase equipment and aircraft for the Contras.

The eighth criminal venture is alleged to have involved defendants Shackley, Clines, Secord and Hakim in a partnership with one Edwin Wilson. The purpose of this partnership was to form EATSCO which plaintiffs contend was engaged in both legal and illegal business activities. With the help of the defendant Martin, the illegal activities included financing terrorist organizations.

With these theories established the plaintiffs then sent out their purported violations of § 1962. The plaintiffs allege causes of action under each subsection of § 1962. Each purported violation of § 1962 includes the racketeering activity and the enterprise discussed above.

The plaintiffs first allege that § 1962(a) was violated because the defendants used invested income received from the pattern of racketeering activity described above to establish, acquire an interest in, or operate their collective enterprise to violate the Neutrality Act.

Defendants also allege that the defendant Owen established an enterprise, with income received from the pattern of racketeering described above to establish an Idea, Inc., which was engaged in activities that affect interstate and foreign commerce.

The plaintiffs also allege that the defendants Quintero, Shackley, Secord, Clines and Hakim have used invested income received from the pattern of racketeering activity described above to establish and operate Orca Supply Co. which is engaged in interstate commerce.

The plaintiffs allege that the defendants Delamico and Martin have used invested income received from the pattern of racketeering activity described above to establish and acquire an interest in and operate the Tamiami Gun Shop and a Honduras firm associated with the Tamiami Gun Shop, both of which are engaged in interstate commerce.

This same allegation is made against the defendant McCoy by using income received from the pattern of racketeering activity to establish and operate R & M Equipment.

Plaintiffs make a similar statement against the defendant Hull. They allege that he has used income received from the pattern of racketeering activity to establish and acquire an interest in and operate his citrus farm enterprise.

Plaintiffs use many of these allegations to support their contentions for a finding of violation of § 1962(b). Plaintiffs first contend that the defendant Hull through his racketeering activity alleged above has acquired and maintained an interest in and control of the ALIANZA REVOLUCIONARIA DEMOCRATICIA ("ARDE").

Plaintiffs also contend the defendants used their pattern of racketeering activity described above to gain control of or operate both Neutrality Act enterprises and the enterprises alleged in the purported violations of § 1962(a).

For the violations of § 1962(c) the plaintiffs allege that each of the defendants was employed or associated with the Neutrality Act Enterprise and has participated in the conduct of the affairs of this enterprise through racketeering acts described above. In addition plaintiffs contend the defendants employed or associated with the other business and enterprise discussed in the purported violations of § 1962(a) and they conducted affairs of these enterprises through a pattern of racketeering activity.

Similar broad allegations are made with respect to violations of § 1962(d). The plaintiffs contend that the defendants have conspired together to violate the subsections in § 1962 and have taken overt acts further into this conspiracy.

B. The State Law Claims

Plaintiffs bring seven state law claims. Six arise under Florida common law, and the seventh is one under the Florida RICO Statute, § 895.03. Because the allegations under each of these counts differ, the court now reviews them in detail.

The first count is for battery. The plaintiffs contend that on May 30, 1984, all the defendants acting pursuant to a conspiracy intentionally inflicted serious physical injury upon the plaintiff Avirgan by causing the defendant Galil to place and detonate a C-4 explosive device at the La Penca press conference. Plaintiff further alleges that this intentional battery caused physical injuries in the form of torn flesh,

burns and a mangled left hand to the plaintiff Avirgan. As a result of these injuries the plaintiff contends he incurred hospital costs, medical bills and loss of income due to his inability to work. The plaintiff Avirgan also contends he experienced extreme physical pain and suffering.

The second count is one for loss of consortium on behalf of plaintiff Honey. She alleges that due to the physical injuries inflicted upon Avirgan she suffered loss of consortium including the companionship, fellowship, company and aid of her husband. She also alleges a loss of her income during the period of her husband's recovery.

Plaintiffs also allege a cause of action for assault. Plaintiffs contend the defendants acted pursuant to conspiracy and through agents, and willfully communicated threats of serious physical injury to the plaintiffs. Plaintiffs also allege the defendants had the present ability to effectuate these threats. Plaintiffs contend they were put in fear of their lives, and for the lives of their children, and were forced to move their children from Costa Rica and hire private body guards.

Count four is one for intentional infliction of mental distress and relates to the aforementioned threats in the assault count. The plaintiffs contend that the purpose of these threats was to inflict intentional emotional distress.

The fifth count is one for trespass and damage to personal property. Plaintiffs contend that the bombing at La Penca destroyed the plaintiffs' television recording equipment.

The plaintiffs also allege a state RICO claim under Fla. Stat. Ann. § 895.03. Plaintiffs adopt all their allegations of their federal RICO claim for this claim. They also demand

the same relief.

III. The Law of Summary Judgment

A. The standard to be applied

As Judge Alvin B. Rubin so succinctly stated in Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986):

> The principal function of the motion for summary judgment is to show that, in the absence of factual disputes, one or more of the essential elements of a claim or defense before the court is not in doubt and that, as a result, judgment should be entered on the basis of purely legal considerations. Summary judgment must, therefore, be rendered when the material offered in support of and in opposition to the motion "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" [footnote, citing authorities, omitted].

B. Moving party who does not have the burden of proof.

If the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, Celotex Corp. v. Catrett, ____ U.S. ____, 106 S.Ct. 2548 (1986), the burden then shifts to the non-moving party to come forward with sufficient evidence to rebut this showing with his own affidavit or other relevant and admissible evidence. Fed. R. Civ. P. 56(e); Sweet v. Childs, 507 F.2d 675, (5th. Cir. 1975), Munoz v. Intern. Alliance of Thea. Stage Emp., 563 F.2d 205 (5th Cir. 1977). In Fontenot Judge Rubin states it thusly:

In the usual case, the party who seeks a summary judgment must show by affidavit or other evidentiary materials that there is no genuine dispute as to any fact material to resolution of the motion. He must establish thereby the existence or nonexistence of enough of the essential elements of a claim and its related defenses to permit disposition of the claim as a matter of law. Thus, if the movant bears the burden of proof of an issue, either because he is the plaintiff or as a defendant he is asserting an affirmative defense, he must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in his favor.

If the movant, however, does not bear the burden of proof, he should be able to obtain summary judgment simply by disproving the existence of any essential element of the opposing party's claim or affirmative defense. "Of course," as Professor Martin B. Louis points out in his article, Federal Summary Judgment Doctrine: A Critical Analysis, "when the movant is a plaintiff he must ordinarily do more than defeat the opposing party's affirmative defenses in order to obtain a final [rather than partial] judgment." Since, in addition to asserting an affirmative defense, the defendant will likely have denied the plaintiff's allegations, the plaintiff must also establish all of the essential elements of his claim.

The crucial question for the court is whether there is a "genuine issue" of fact concerning any essential element of the claim on which judgment is being sought. If the moving party can show that there is no evidence whatever to establish one or more essential elements of a claim on which the opposing party has the burden of proof, trial would be a bootless exercise, fated for an inevitable result but at continued expense for the parties,

the preemption of a trial date that might have been used for other litigants waiting impatiently in the judicial queue, and a burden on the court and the taxpayers.

Fontenot, 780 F.2d at 1194.

C. Burden on Non-moving Party Having Burden of Proof.

As Judge Ruben observes in his excellent analysis of the current law of guiding principles to be followed when determining summary judgment issues:

> Few of the cases or commentators have squarely faced the problem raised by this case. When a defendant moves for summary judgment of the ground that the plaintiff has failed to establish a prima facie case, must he adduce positive evidence to disprove the existence of an essential element of the plaintiff's case, or may he simply show that the plaintiff has failed to bring out any evidence whatever in support of that element of his claim? The treatises written by Professor Morore and by Wright and Miller at least imply that because of its structure and phrasing, Rule 56 requires the movant to establish in some fashion the absence of any issue of material fact, even though the other party would be required not only to adduce evidence on, but to prove the existence of, the critical facts at the trial.
>
> Rule 56 does not, however, preclude the coordination of summary judgment proof requirements with the allocation of the burden of proof at trial. If a party who does not have the burden of proof at trial has access to evidentiary materials that disprove the facts necessary to establish the opposing party's position, he should adduce them in one of the fashions mentioned by Rule 56:

affidavit, deposition, or testimony, when permitted by Rule 43(e). If, however, it is evident that the party seeking summary judgment against one who bears the proof burden has no access to evidence of disproof, and ample time has been allowed for discovery, he should be permitted as Upjohn did here, to rely upon the complete absence of proof of an essential element of the other party's case. [Footnote, citing authority, omitted].

D. A Non-moving Party, Opposing a Motion for Summary Judgment Supported by Affidavits Cannot Meet His Burden of Coming Forth with Relevant, Competent Evidence by Relying on Legal Conclusions or Evidence Inadmissable at Trial.

Fontenot 780 F.2d at 1195.

In the case at bar the court must determine whether the moving defendants have produced, by competent admissable evidence, sufficient facts to shift the burden to plaintiffs. If the court reaches this conclusion, it must then consider the plaintiffs' rebuttal proof.

The evidence presented to refute the movants' summary judgment must be supported by admissable evidence showing a genuine issue of material fact. Fed.R.Civ.P. 56 (e). The evidence produced by plaintiffs cannot consist of conclusory allegations or legal conclusions. First National Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 289, 88 S.Ct. 1575, 1529-93, 20 L. Ed.2d 569, 591-93 (1968); Galindo v. Precision Am. Corp., 754 F.2d 1212, 1216 (5th Cir. 1985); Fontenot v. Upjohn Co. supra.

Clearly, only that evidence admissible at trial may be considered in passing on the propriety of the granting or denying of summary judgment. Fed.R.Civ.P. 56(e); see also

Fed.R.Civ.P. 56(e), advisory committee note Munoz v. Intern. Alliance of Thea. State Emp., 563 F.2d 205 at 213; Hollingsworth Solderless Terminal Co. v. Turley, 622 F.2d 1324, 1335 n.9 (9th Cir. 1980); Bruce Construction Corp. v. United States, 242 F.2d. 873 (5th Cir. 1957); Sires v. Luke, 544 F.Supp. 1155, 1160 (S. D. Ga. 1982).

E. Requirement for Filing of Depositions and Discovery Materials with Court

S.D. Fla. R. 10 I 1 mandates retention of discovery material by the party taking the deposition or causing the interrogatories or produced items to be taken or obtained. These depositions, interrogatories, requests for documents or admissions, or answers or responses thereto, which are necessary to any pretrial motion, shall, under S.D. Fla. R. 10 I 3, be filed with the Clerk of Court at the time of filing the motion or response thereto if the materials are relied upon by the filing party.

The parties on all sides of this litigation have paid little heed to these rules, although the rule permits " the portions to be used" to be filed with either the motion for summary judgment or the response thereto. The minimal compliance with the rule by the parties has resulted in the court being furnished with only a few pages of some of the depositions, and none of the cross examination by the adverse party. It, therefore, has been a frustrating experience for the court to have been compelled to search the record time and again, in order to collate the portions of testimony furnished by counsel. These portions of deposition testimony were found scattered through the record and not filed as a complete deposition by counsel. The court however, must rely upon the fact that all necessary and relevant deposition and discovery evidence that the parties deemed important has been furnished to the court in support and opposition to

these several motions for summary judgment filed herein.

F. Notice to Parties of Final Deadline for Completion of Discovery.

Adhering to the mandate of Fed.R.Civ.P. 1 securing to all litigants in U.S. District Courts the right to "...just, speedy and inexpensive determination of every action.", it is the general practice in this district to set every civil case for pretrial conference shortly after the case is at issue.

Since all discovery must be completed at least five days before the pretrial conference under the provisions of S.D. Fla. R. 14G, the date ordered by the court for the conference is of critical importance. This date controls the time within which all discovery must be completed. See F.R.Civ.P. 16(b). With all discovery completed, the record is complete and the court can rule on any pending motions for summary judgment with all relevant facts in the record.

In this particular case, the court gave eight months notice, by written order, to all counsel of the pretrial conference date.

The parties had clear notice of the discovery cutoff dates in ample time to complete the relevant discovery pertinent to the subject matter. The court made abundantly clear to all parties that there would be no continuation of the discovery phase beyond the time provided by Rule 14G, both during oral arguments in open court and in written orders issued by the court.

With the foregoing principles in mind the court now turns to the motions for summary judgment filed by the defendants. The court has reviewed all the affidavits

submitted by the moving defendants and concludes that under the principles of Fontenot the defendants have satisfied their burden of showing the existence of no genuine issue of material fact with respect to the allegations made against them. the burden therefore, has shifted to the plaintiffs to show the existence of genuine issues of material facts. The court now reviews the proof the plaintiffs have submitted to satisfy their burden.

IV) The Plaintiffs Fail to Show a Genuine Issue of Material Fact with Respect to the Causation of Their Injuries

The court has conducted extensive review of the numerous evidentiary submissions filed by the plaintiffs in opposition to the various summary judgments. The complaint alleges all the defendants to be interrelated, and treats all the defendants as responsible for the bombing for this reason the court has considered all the filings as one. From this viewpoint, the court must grant summary judgment because the plaintiffs have failed to establish the existence of a material fact concerning the cause of their injuries. This is an essential element of a RICO action.[2] The causation link is missing in this record. Without it, the case fails.

Plaintiffs allege that they defendants have injured them in three general ways. First, Plaintiffs allege their business and property were harmed by the bombing at La Penca. Second, the plaintiffs contend that their business and property were harmed by the threats of kidnapping and murder made to their new sources, Carlos Rojas Chinchilla and David as well as the actual kidnapping of Chinchilla and

[2] Accordingly, the court has no need to, and therefore, cannot make a finding concerning the alleged § 1962 violations.

the kidnapping and murder of David. Finally, the plaintiffs allege that the defendants made threats of serious physical harm against them. The court now examines the evidence submitted to show a genuine issue of material fact with respect to the cause of these harms.

The plaintiffs' primary allegation is that the defendant, Amac Galil, disguised as a journalist named Per Anker Hansen detonated the bomb at La Penca press conference acting in conspirital concert with the other defendants. To survive defendants' motions for summary judgment,therefore, the plaintiffs must at least show that genuine issues exist with respect to two allegations: (1) that Hansen did the bombing, and (2) that Hansen was associated with the defendants or was part of the purported enterprise at the time of the bombing.

Plaintiffs have presented no direct evidence, nor eye-witness testimony showing that Hansen was at the press conference, let alone whether he set the bomb. Further, the plaintiffs have not presented any competent evidence to show that Hansen ever had explosives or that this individual was in fact the defendant Amac Galil. Circumstantial evidence has been presented which plaintiffs contend is sufficient to defeat defendants' motions for summary judgment. The court now reviews this evidence.

The court starts with the publication submitted by the plaintiffs concerning the La Penca bombing. Exhibit 43 of plaintiffs' opposition to Hull's motion. The publication was written by the plaintiffs and concludes that the journalist Per Anker Hansen, who was the defendant Amac Galil, caused the bombing at La Penca. Obviously, this evidence is patently inadmissable.

The plaintiffs have also submitted a report by the Costa

Rican authority OIJ. Exhibit 41 of plaintiffs' opposition to Hull's motion. The plaintiffs contend that the OIJ is the equivalent of the Federal Bureau of Investigation. In actuality, the plaintiffs have submitted a one page translation of a five page document originally written in Spanish. This translation concludes that Per Anker Hansen was a Danish national posing as a journalist for a European communications medium. The translation indicates that OIJ further concluded that Hansen carried with him a box whose characteristics corresponded to the debris found at the site of the bombing. The translation of the OIJ report does not conclude that Hansen actually did the bombing. This uncertified, unsigned translation in summary form of this purported official document is not admissible.

Plaintiffs have also submitted portions of the deposition of Fernandez Cruz Castro. Exhibit 49 of plaintiffs' opposition to Calero's motion. The plaintiffs asked Cruz (who appears to have worked with the OIJ) to either recall or recite the contents of a letter. The testimony submitted does not establish that Cruz had any familiarity with the document. Nevertheless, Cruz states, from memory, that the letter concluded the Per Anker Hansen committed the La Penca bombing. The plaintiffs have not established that this is an official investigative record, and, moreover, have not shown that the requirements of Fed. R. Evid. 803(8)f(B) or (C) have been met. The court finds this evidence is unreliable and will not consider it.

Plaintiffs have also filed portions of .the deposition of Eden Pastora, the alleged target of the bomb who states that he did not see the journalist known as Amac Galil at the La Penca press conference. Exhibit 3 of plaintiffs' opposition to Hull, p. 75.

The plaintiff, Martha Honey, also filed an affidavit with

the opposition papers to Calero's motion wherein she gives a summary of her notes of an interview by telephone of a Mr. Molinares of Molinares Rent a Car. During this conversation Mr. Molinares reviewed his records and told Martha Honey that Per Anker Hansen rented a car from him around March 9, 1984, and kept the car for 14 days. Ms. Honey also states that Mr. Molinares identified Per Anker Hansen as the same person whose picture appeared in the paper. Aside from the obvious evidentiary problems associated with this statement the alleged renting occurred over two months before the bombing at La Penca.

The court next turns to the filed portions of the deposition of Alberto Eduardo Guevara Bonilla (Guevara), Exhibit 14 of plaintiffs' opposition to Hull's motion. Mr. Guevara testified that he saw Per Anker Hansen after the bombing and that "His face was slightly burned, he has soot on his face, there were blood stains on his shirt, and he was in a wheelchair." Id. at 10. Guevara did not see Hansen after that. Guevara also testified that he saw some of the materials collected some 70 meters or so from the bombing site, including a wig worn by Hansen's woman companion. Guevara said the wig found around the explosion site was the same wig that he had seen on Hansen's woman companion because he recognized the peculiarity of the hair style. Guevara had seen Hansen and the woman companion on three separate occasions.

Plaintiffs also offer the Guevara deposition to show that Hansen was in the area around the relative time frame. Guevara testified he saw Hansen and a female companion on the day of the press conference at the Irazu Hotel.

Approximately twenty-two days before the bombing Guevara stated that he saw Hansen, the woman companion and defendant John Hull arriving together in an orange

Toyota. Entering a boat with an outboard motor, and heading northeast on the river. He stated that Hansen was carrying a metal case with a "fragile U.S.A. postage" tag on it, along with assorted cameras and camera equipment.

Guevara also testified that he saw Hansen and the woman companion at the end of March or early April 1984. Guevara stated that he was directed by memorandum dated in San Jose to make a vehicle available for Hansen. Hansen and the woman used the vehicle for approximately six hours and returned it to the post.

After considering the admissable evidence above the court finds the plaintiffs have made no showing that there is a genuine issue of material fact concerning the bombing at La Penca. At most the evidence could indicate that a genuine issue of fact exists concerning whether Hansen was in the La Penca vicinity around the time of the press conference. Whether Hansen was in the vicinity of the La Penca press conference is not an issue. The allegation of import once here is whether this person Hansen committed the bombing at La Penca. The evidence submitted by the plaintiffs fails to show that there is a genuine issue of material fact with respect to this contention.

Moreover, even if the plaintiffs could show that Hansen did the bombing at La Penca, summary judgment would be appropriate. The plaintiffs have not shown that Hansen was connected to any of the defendants, by proof sufficient to render any of them legally responsible for his actions as required by law. Although they made the allegation, they have not produced competent evidence that Hansen was the defendant Galil as alleged. In addition, the plaintiffs have not otherwise produced evidence that the defendant Hansen was paid by, worked with, associated with, or conspired with any of the other defendants.

Primarily, the plaintiffs attempt to link Hansen with the defendants Hull and Calero. They allege that these defendants had both the motivation and the means to assassinate Eden Pastora. Nonetheless, the fact the Hull and Calero had the motive and means to kill Pastora is not the controlling factual question here. The particular allegation of relevance here the contention that the defendants somehow are connected with Galil, acting as Hansen in the bombing.

Plaintiffs again use portions of the Guevara deposition to show that Hull and Hansen were together when they picked up the boat 22 days before the bombing. Exhibit 14 of plaintiff's opposition to Hull's motion. Eden Pastora testified in his deposition, Exhibit 3 of plaintiffs' opposition to Hull, that he received a radio transmission in the first days of May and was told by his companions that it was Hansen. Pastora deposition at 67-68. Pastora's testimony is patent hearsay without an exception.

Plaintiffs' rely upon the statements made by Jack Terrell. Exhibit 27 of plaintiff's opposition to defendant Hull; Exhibit 6 of plaintiffs opposition to defendant Calero. Plaintiffs cOntend that this is courtroom testimony made by Terrell during the libel trial against the plaintiffs in Costa Rica. No official transcript is provided, but the document reflects that Terrell said that he was personally present at two meetings which took place after the La Penca bombing. Plaintiffs allege that in these meetings a separate conspiracy to assassinate Pastora was discussed.

One meeting was purportedly held in December 1984 or January of 1985 in Calero's home in Miami, Florida. The document containing the purported testimony of Terrell reflected that the following were present: Felipe Vidal Santiago, John Hull, Rob Owens, Tom Posey, Lanny Duyck

and one man, unknown to Terrell who was later identified to him (by an unnamed person) as Amac Galil. Terrell stated that in this meeting "Felipe [Vidal] stated that we put a bomb under him and it didn't work because of bad timing. But no one used the name La Penca." Terrell also stated that he knew of no meeting in which John Hull met with the purported La Penca terrorist identified as Amac Galil. Finally, Terrell stated that he had no knowledge that John Hull either participated in the La Penca bombing himself or participated through an intermediary. Exhibit 27 at p. 83-89. Terrell's statement is contained in a publication entitled "La Penca; on Trial in Costa Rica, the CIA v. the Press," edited by Tony Avirgan and Martha Honey, plaintiffs. The testimony contained in plaintiffs' publication cannot be considered as admissible evidence. The court, therefore determines that Terrell's statement contained in plaintiffs' publication is inadmissible.

Plaintiffs also submit the depositions of Joseph Adams and Lanny Duyck who both took the fifth amendment with respect to questions concerning the two meetings mentioned in Terrell's statements. Exhibits 26 and 28 of plaintiff's opposition to Hull. As the court will discuss more in depth shortly, these inferences do not establish any connection between any of the defendants and Hansen.

Plaintiffs argue that when a witness asserts a Fifth Amendment privilege in response to a question, that the facts stated in the question can be used against not only the witness asserting the privilege, but all other parties. For example, the defendant Quintero asserted the Fifth Amendment to a question concerning the La Penca bombing. Plaintiffs suggest that a negative inference arises that applies to all defendants.

While a negative inference may be applied to other evidence against the person asserting the privilege, see Baxter v. Palmigiano, 425 U.S. 308 (1976), it cannot be applied to a defendant who did not take the Fifth Amendment.[3] Accordingly, this court will not give a negative inference to any assertion of the Fifth Amendment against any defendant other than the one asserting this privilege.

Moreover, the negative inference created against the defendant asserting the self incrimination privilege cannot alone satisfy the burden required by Fed.R.Civ.P. 56. In United States v. Rylander, 460 U.S. 752 (1983), the Supreme Court held that the negative inference drawn from a defendant's assertion of the Fifth Amendment could not substitute for evidence necessary to meet the burden of production. Plaintiffs only rely on the depositions of the defendants asserting this privilege as proof of the conspiracy for La Penca. See Quintero deposition at pages 82, 97; See also depositions of Secord and Hakim. The plaintiffs present no other evidence to show that these defendants actually did the bombing at La Penca, or were associated with Hansen. Accordingly, even if the court agreed with plaintiffs and permitted the drawing of a negative inference to arise from these assertions against these defendants, this would be insufficient to defeat summary judgment.

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[3] The law apparently recognizes that a jury may under limited circumstances draw reasonable inferences against an employer from an employee's assertion of the 5th Amendment. See E.H. Boerth Co. v. LAD Properties, 82 F.R.D. 635, 645 (D.Minn. 1979). Aside from the fact that this type of relationship is not alleged to exist between the defendants here, this court is bound under these circumstances by the Supreme Court's opinion in Rylander, 460 U.S. 752 (1983).

Plaintiffs also produce some evidence with respect to the defendants' involvement in the transshipment of C-4 explosives. Plaintiffs contend that the explosives used at La Penca were C-4. To support this position, the plaintiffs again rely upon the deposition of Fernando Cruz Castro. Exhibit 49 of Defendant's Opposition to Singlaub. As the court noted before, this deposition, consisting of statements by Mr. Cruz about a letter concerning the bombing at La Penca, is not competent or trustworthy to be admissible under recognized legal standards. Accordingly, this evidence is inadmissible.

Moreover, the other evidence plaintiffs submit concerning C-4 explosives did not specifically relate to the La Penca bombing, either in time or place. They make no showing that this explosive can be directly, or indirectly, traced to the explosive used at La Penca. Plaintiffs attempt to make a showing that these defendants were engaged in the shipment of C-4 explosive to the Central America region. For example, Joseph Adams in his deposition, Exhibit 28 of Plaintiff's Opposition to Hull, took the Fifth Amendment when asked a question whether he had seen C-4 stored in Central America, but answered in the negative when asked whether he had seen C-4 explosives stored in Dade County, Florida during the period of his employment with Adolfo Calero. Apparently, plaintiffs attempt to use Adams' assertion of his Fifth Amendment privilege against Calero to show that C-4 explosives were in Central America. Plaintiffs having failed to make any showing that there were C-4 explosives associated with the enterprise or with the bombing, the court finds that this negative inference does not establish a showing that a material issue of fact exists with respect to the enterprise causing the bombing. Plaintiffs' showing also fails to establish that there was any connection with the C-4 and Hansen, or the C-4 explosive and his relationship to the enterprise.

Plaintiffs also submit evidence concerning the defendants' transshipment of C-4 explosives after the La Penca bombing. For example, they provide passages from the defendant Singlaub's congressional testimony before the Iran Contra Committees of Congress concerning the purchasing of C-4 explosives through the Iran Contra network in December 1986. See Exhibit 43 of plaintiffs' opposition to Singlaub's Motion. In addition, plaintiffs also rely upon the deposition of Sam Hull, Exhibit 10 of Plaintiff's Opposition to Singlaub's Motion, who stated that he requested C-4 for his missions in Central America in the summer of 1985, one year after the La Penca bombing.

Plaintiffs' showing here is insufficient to establish a genuine issue of material fact with respect to whether Hansen was connected with the defendants as part of the purported enterprise at the time of the bombing. The showing may establish issues of fact concerning whether Hansen was in the vicinity of La Penca at the time of the incident, whether Hansen in his alleged role as a newspaperman spoke.with one or two of these defendants, and that C-4 explosive was shipped to Central America after the La Penca bombing. Plaintiffs may also have made a showing that a purported conspiracy to kill Eden Pastora arose six months after the La Penca bombing occurred, but they make no showing the Hansen was the defendant Galil or that Hansen or Galil were associated with the enterprise, or worked with the enterprise, or were paid by the enterprise, or any of the defendants.

To find the required showing of causation here, the court cannot string these threads together with the submitted evidence concerning some of the defendant's motivations to kill Eden Pastora, See e.g., Statement of Aguado, Exhibit 38

of Plaintiff's Opposition To Hull[4] or evidence of other alleged bad acts, See e.g., Statement of Jesus Garcia, Exhibit 29 of Plaintiff's Opposition To Hull's Motion (speaking in inadmissible manner of attempts to assassinate U.S. Ambassador in Costa Rica). The actual event and motivation, absent any direct evidence of a link, in insufficient to meet the summary judgment burden with respect to the essential element of causation.[5]

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[4] This exhibit is an uncertified translation of a statement made by Aguado to a notary public in Costa Rica. The statement says that about a month before the La Penca bombing, Aguado was with Hull and a Mr. Mariano Montealegre at El Higueron in Muelle de San Carlos. The statement continues by saying that a Mr. Juan Jose Saborio Campos (who is not a defendant) joined them. The statement reflects that Aguado did not know, nor had ever seen Campos before that day. The statement indicates that Montealegre introduced Aguado to Campos, who, without any preamble, stated that "It was necessary to look for a fast way to get rid of Eden Pastora.. Aguado stated that he left immediately thereafter, and spoke to Montealegre after Campos left, and Montealegre stated that Campos "was crazy." Of course, this particular exhibit would be inadmissible at trial and, therefore, cannot be considered on this summary judgment motion.

[5] The record also indicates that the plaintiff suffered no cognizable injury under RICO from the La Penca bombing. The plaintiff Avirgan has alleged that a television camera he was using was damaged by the bombing. The defendant Owen notes that the plaintiff Avirgan raised a party in interest question in his deposition. At pages 343-344 of his deposition, Avirgan indicated that the damage to the camera was paid by a Lloyd's of London insurance policy and ABC News, Avirgan's employer. Under the principles of equitable subrogation, which Florida recognizes, see Dixie National Bank of Dade County v. Employers Commercial Union Ins. Co., 463 So.2d 1147 (Fla. 1985), the entity compensating for another's loss has the right

Plaintiffs have also alleged that this enterprise participated in other acts of racketeering that caused the plaintiffs injuries after La Penca bombing. The plaintiffs allege that these racketeering acts were designed to thwart the plaintiffs' investigation of defendants' relationship to the La Penca bombing.[6] Plaintiffs also make an insufficient

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to recover from the entity causing the loss. Apparently, under this analysis, the only parties who could recover for the camera's damage would be Lloyd's of London and ABC, News.

If this proposition were true, Avirgan would have no La Penca injury capable of being remedied by RICO. His only allegations remaining regarding La Penca would be the loss of income due to physical injuries allegedly inflicted by the bombing. In this circuit, recovery for these injuries under RICO is prohibited. See, Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988).

[6] The court finds that the plaintiffs cannot suffer any injury to their news business or any property right by the alleged threats, kidnapping and murder of their news sources. The plaintiffs cannot have a property right in these individuals. The plaintiffs' expectation that these news sources would continue giving them information is not an entitlement, but only a speculative proposition.

The Plaintiffs' previous reliance on Carpenter v. United States, 108 S.Ct. 316 (1987), is inapposite here. The Carpenter court found a newspaper's use of information already within its control to be a protected property right. The newspaper had "possession" of this information because the sources had given one of the newspaper's reporters some relevant facts that the reporter turned into a news article. These facts are not alleged by the plaintiffs. The analysis that follows is given only for the purpose of indicating that the plaintiffs have failed to make a sufficient showing with respect to these allegation.

showing to withstand summary judgment with respect to these allegations.

Plaintiffs first allege that they were injured in their business and property by the defendants' threats to kidnap and murder two of their news sources - a Carlos Rojas Chinchilla and David. Moreover plaintiffs allege that their business and property were further injured when David was murdered and Chinchilla kidnapped.

To support these allegations plaintiffs offer the deposition testimony of Carlos Rojas Chinchilla (Rojas), Exhibit 49 of Plaintiff's Opposition to Hull and as Exhibit to Plaintiff's Opposition to Calero. Rojas testified that David, a Contra giving inside information to plaintiffs, and himself, were kidnapped and driven for several hours to a field. Mr. Rojas never identified the field or the men who had kidnapped him, but he stated that the unknown men said they were going to call John Hull's house, or where ever John Hull was. Rojas Deposition at 190. Rojas testified that he and David struck the man with the gun and ran away to safety. The court finds that the testimony of Carlos Rojas repeating comments of one of his kidnappers is inadmissible hearsay.

Martha Honey also testified "We also now have been told by Costa Rican and Contra sources, officials, that David, our witness was killed on John Hull's farm." Deposition of Martha Honey, Exhibit 45 of Plaintiff's Opposition To Hull. Because Martha Honey's testimony is hearsay evidence the court finds it inadmissible.

Accordingly, because this testimony does not establish any connection between the defendants and these alleged acts, the plaintiffs have failed to make the requisite showing that a genuine issue of material fact exists with respect to these

allegations.

The court now turns to the allegations concerning the threats of physical harm to the plaintiffs. Martha Honey testified that she received death threats over the telephone around the time that David disappeared. See Exhibit 45 of Plaintiff's Opposition to Hull. Ms. Honey never provided any information connecting the threats she received to any member of the enterprise. Plaintiffs also offer the testimony of Carmen Araya. Exhibit 46 of Plaintiff's Opposition to Hull. Ms. Araya, an employee of the plaintiffs, received a death threat from an unknown person while she was having ice cream at a shop. She testified that someone came up to her and asked if she worked for Martha and Tony and said to be careful because "I work for John Hull and must be careful." Araya deposition at 21-22. Again no showing was made as to whom the person was who made the threat to her or for whom the person worked for except for the hearsay testimony that the threatener worked for John Hull.

Finally, plaintiffs also seek to use the deposition testimony of Glen Robinette. Exhibit 41 of Plaintiff's Opposition to Secord. Robinette testified that he was hired by defendant Secord to investigate the plaintiffs with respect to this law suit. Robinette testified that he met with Hull and received several affidavits which he stated indicated that Avirgan and Honey approached persons presently in jail to provide false testimony. The affidavits were never filed and the testimony of Robinette does not show that any of the defendants were attempting to interfere with plaintiffs' news gathering business. Accordingly, plaintiffs have failed to make the requisite showing that a genuine issue of material fact exists with respect to interference with their business or that threats of physical harm were made to them.

The plaintiffs have not made a showing of a genuine

issue of material fact with respect to any of their allegations concerning the cause of their purported injuries. Causation is an essential element of a RICO action. Accordingly, the defendants who have moved are entitled to summary judgment.

V) Summary Judgement On The State Law Claims

Because the plaintiffs have failed to show that a genuine issue exists with respect to the causation of their injuries, the defendants are entitled to summary judgment on the state law claims as well. Summary judgment is proper on the Florida RICO claim because summary judgment is granted on the Federal RICO claim, which the State claim mirrors. The battery, trespass, and the loss of consortium counts all revolve around the alleged bombing at La Penca. Because the plaintiffs have made no showing that a genuine issue of material fact exists with respect to the defendants causing this bombing, plaintiffs are not entitled to present these claims to the jury. Similarly, because the assault and mental distress claims revolve around the alleged threats made to the plaintiffs, and the plaintiffs have made no showing of a genuine issue of material fact with respect to the threats, defendants are entitled to summary judgment on these counts.

VI) Conclusion

As set forth above, the plaintiffs have made no showing of existence of genuine issues of material fact with respect to either the bombing at La Penca, the threats made to their news sources, or threats made to themselves. Plaintiffs, therefore, cannot show that their injuries were proximately caused by the defendants. Both RICO causation and tort law causation must be proven in every case. The defendants are, therefore, entitled to summary judgment.

With respect to the non-moving defendants, the Court cannot try them in the interests of fairness and judicial economy. The plaintiffs have been on notice that these defendants would be subject to dismissal by the challenges made in the other defendant's motions. These challenges went to the heart of the plaintiff's theory, which now cannot be submitted to the jury. To try these defendants would be unfair to them, and as Judge Rubin stated, unfair to the other litigants "waiting impatiently in the judicial queue". Fontenot, 780 F.2d at 1194. Accordingly, all the defendants are entitled to summary judgments. It, therefore, is

ORDERED and ADJUDGED summary judgment is hereby entered for and on behalf of each of the defendants in this case.

DONE and ORDERED in chambers at the United States Courthouse, Federal Courthouse Square, Miami, Florida, this 23rd day of June 1988.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-1146-CIV-KING

Entered 2 February, 1989
Reported as Avirgan v. Hull,
705 F.Supp. 1544 (S.D.Fla. 1988)

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.

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ORDER GRANTING MOTIONS FOR COSTS AND ATTORNEYS, FEES

Tony Avirgan was injured by the explosion of a bomb in the jungle at La Penca, Nicaragua. He accused the defendants of exploding the bomb in an attempt to assassinate Eden Pastora, a contra leader. After two years of protracted and extensive discovery of scores of witnesses across the United States, Costa Rica, and elsewhere, the plaintiffs were unable to produce a single witness who could state that the defendants exploded the bomb or were responsible for the assassination attempt. See Avirgan v. Hull, 691 F.Supp 1357 (S.D. Fla. 1988).

The attorneys for the plaintiffs, The Christic Institute, must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint. Plaintiffs' lead counsel, Daniel Sheehan, supplemented the complaint with a detailed affidavit outlining the purported testimony of seventy-nine witnesses who Mr. Sheehan stated had factual knowledge that these defendants set and exploded the bomb that caused plaintiff's injuries.

The seventy-nine witnesses were identified only by number. Plaintiffs' counsel refused to identify the names and addresses of the vast majority of the seventy-nine witnesses until ordered to do so by the court. Plaintiffs appealed the order requiring them to disclose the identities of the witnesses. These actions by plaintiffs and their counsel prevented the defendants from taking depositions of these witnesses, and delayed orderly discovery for many months.

After all the appeals were exhausted and plaintiffs complied with the order to reveal the names of their witnesses, the reason for the plaintiffs' adamant refusal became apparent. Specifically, the names and identities of approximately twenty of the seventy-nine witnesses were totally unknown to Mr. Sheehan or the plaintiffs. Several of the disclosed witnesses later stated under oath that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit. The remaining witnesses did not furnish any statements that would be admissible. Much of the testimony of these witnesses involved conversations they allegedly had with other people, which is the hearsay testimony inadmissible at a trial.

Based upon the affidavit of plaintiffs' counsel, the

plaintiffs were permitted to conduct two years of discovery. This discovery failed to produce any admissible evidence regarding causation. Avirgan v. Hull, 691 F.Supp 1357. The Christic Institute's allegations, essentially maintaining that the plaintiffs were victims of a wide-ranging conspiracy spanning thirty years and involving the activities of former United States Government officials, CIA operatives, Colombian druglords and arms merchants in Cuba, Southeast Asia, the Middle East, and Central America, were based upon unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge. These actions establish that plaintiffs "had every reason to know they stood no chance of proving" that the defendants were responsible for the injuries to Tony Avirgan. Collins v. Walden, 834 F.2d 961, 964 (11th Cir. 1987). This abuse of the judicial process requires that the plaintiffs make the defendants whole by paying the fees the defendants have been forced to expend for attorneys in this action. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975); Collins, 834 F.2d at 964; Gordon v. Heimann, 715 F.2d 531 (11th Cir. 1983); see also 28 U.S.C. § 1927 (1986).

The motions for costs and attorney's fees filed by the prevailing defendants are the last remnants of this case. The court now addresses the questions raised by these motions.

A. COSTS

Normally, an award of costs is relatively straight forward. Federal Rule of Civil Procedure 54(d) provides that a court may tax costs in favor of the prevailing party. The particular costs that can be taxed are detailed in 28 U.S.C. § 1920. This section expressly provides that the following items may be taxed as costs:

1) Fees of the clerk and marshal;
2) Fees of the court reporter for all or any part

of the stenographic transcript necessarily obtained for use in the case;

3) Fees and disbursements for printing and witnesses;

4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

5) Docket fees under section 1923 of this title;

6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

Some of the successful defendants have filed Bills of Costs. Although the plaintiffs have failed to make specific objections to requested costs, the court will analyze the requests and determine the appropriate amounts based on the statutory guidelines. Specifically, the court will disallow "costs" that are not set out in 28 U.S.C. § 1920. See Crawford Fitting Company v. J.T. Gibbins, Inc., 107 S.Ct 2494 (1987).

1ADOLFO CALERO

Defendant Calero filed an affidavit listing costs totalling $1,935.64. The affidavit states that the following costs have been expended in connection with the defense of this case:

DISBURSEMENTS	AMOUNTS
Messenger Service	$80.00
Postage	102.94
Photocopies	1,225.65
Parking	10.10
Mileage	1.20
Telefax Transmissions	34.00
Word processing costs	280.00

Depositions	201.75
TOTAL DISBURSEMENTS:	$1,935.64

The statutory provision does not provide for the taxation of messenger service, postage, parking, mileage, telefax and word processing costs, so the court disallows the requested costs. The request for "deposition" costs presumably is for costs incident to taking a deposition. The court, consequently, taxes as costs the "deposition" and the photocopying of depositions. Plaintiff Calero, therefore, is awarded $1,427.40 in costs.

2. JOHN HULL

Hull has listed four types of costs in his Bill of Costs. He requests the following costs:

DISBURSEMENTS	AMOUNTS
Fees for exemplification and copies of papers necessarily obtained for use in case	$1,058.75
Costs incident to taking of depositions	1,602.70
Long distance phone expense	148.98
Postage	204.82
TOTAL DISBURSEMENT:	$3,015.25

Because 28 U.S.C. § 1920 does not provide for them, the court disallows the long distance phone charges and again denies the postage costs. The defendant is entitled to

$2,661.45 in taxable costs.[1]

3MOISES NUNEZ RUIZ

Nunez Ruiz has listed two expenses, both of which are enumerated in § 1920. Specifically, he has made the following requests:

DISBURSEMENTS	AMOUNTS
Fees for printing	$644.85
Translating services	92.00
TOTAL DISBURSEMENT	$736.85

The prevailing defendant is entitled to these specifically enumerated costs totalling $736.85.

4ROBERT OWEN

Defendant Owen submitted a Bill of Costs that contained the following two items:

DISBURSEMENTS	AMOUNTS
Fees for copies of papers necessarily obtained for use in the case	$2,844.00
Costs incident to taking of depositions	2,774.90
TOTAL DISBURSEMENTS	$5,663.90

The defendant provided detailed attachments to indicate the necessity of these items. The court, accordingly, awards

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[1] This defendant, like several others, has filed a motion under Rule 30(g)(2) for fees and cost. The defendant, however, has not listed these expenses, so the court presumes the amount allowed under 30(g)(2) is included in the total request.

costs totalling $5,663.90 for defendant Owen.

5RICHARD SECORD

The following requests were filed by defendant Secord:

DISBURSEMENTS	AMOUNTS
Transcripts	$2,925.30
Xeroxing	2,283.10
Courier Service	958.95
Telecopy and Telex	225.00
Postage	401.88
Telephone	834.75
Travel Expenses	7,112.04
TOTAL DISBURSEMENTS:	$14,741.02

Because the statute does not allow courier services, telecopy, telex, postage, telephone, and travel expenses, these amounts are disallowed. The request for transcripts and xeroxing expenses is appropriate, so the defendant is entitled to $5,208.40 for costs.

6. RONALD MARTIN, JAMES McCOY and MARIO DELL AMICO

All three defendants were represented by the same law firm. The attorney stated in the Bill of Costs that costs incident to taking of deposition and the copying is $4,373.85. These requests are entirely appropriate and the court grants the request. The defendants also ask for the following other costs:

DISBURSEMENTS	AMOUNTS
Air Fare	$154.00
Long distance telephone	365.98
Messenger service	230.90

Postage	128.25
Secretarial overtime	200.98
Telecopying	232.00
Parking and other miscellaneous costs	140.48
Legal research costs	157.50
Word processing costs	42.00
Word processing overtime	45.00
TOTAL DISBURSEMENT:	$1,647.04

Section 1920 does not provide for any of these costs, so they are all disallowed. Consequently, the court awards only $4,373.85.

7. RAFAEL QUINTERO, THOMAS CLINES and ALBERT HAKIM

Like the previous defendants, Quintero, Clines and Hakim all retained one law firm. The law firm submitted the following list of costs:

DISBUREMENTS	AMOUNTS
Xeroxing	$1,167.00
Courier services	144.40
Telephone and telecopy	193.17
Postage	162.73
Travel expenses	2,162.47
5% Fla. Sales Tax 7/1 - 12/31/37	8.12
TOTAL DISBURSEMENTS:	$3,837.89

All of these expenses, except xeroxing, are disallowed because they fall outside the statute. The court does allow the photocopying expenses totalling $1,167.00 as recoverable costs.

8. JORGE GONZALEZ

Through an attorney's affidavit, defendant Gonzalez requests the following necessarily incurred disbursements:

DFISBURSEMENTS	AMOUNTS
Postage	$65.25
Long distance telephone calls	12.34
Courier service	16.85
Photocopies	798.30
TOTAL DISBURSEMENTS:	$892.74

Most of the requested costs are not within the statutory provision. The only recognized cost is for photocopying. Accordingly, the court taxes as cost $798.30 for photocopies.

9. JOHN SINGLAUB

Defendant Singlaub vigorously defended against this case and, consequently, has submitted two Bills of Costs totalling more than $100,000. The list of costs, consisting of 28 pages, can be summarized as follows:

DISBURSEMENTS	AMOUNTS
Fees of court reporter for transcripts necessarily obtained for use in the case	$24,698.48
Fees and disbursements for printing	2,194.74
Fees for witnesses	177.00
Fees for exemplification and copies of papers necessarily obtained for use in case	19,271.59
Docket fees under 28 U.S.C. § 1923	20.00
Long distance phone calls	3,241.49
Witness subpoenas	280.00
Postage and delivery	16,919.82
Overtime office expenses	6,300.50

Interpreter costs	168.76
Travel expenses	30,875.09
Miscellaneous	4,469.89
TOTAL DISBURSEMENTS	$108,617.36

Despite the defendant's detailed report, the plaintiffs failed to specifically object. The court, however, is guided by the statutory guidelines set forth in § 1920 and disallows the requests not listed in the statute. The defendant, consequently, is not entitled to expenses for long distance phone calls, witness subpoenas, postage, delivery, overtime staff, travel and miscellaneous cost. With these costs deleted, the defendant's total allowed amount is $46,530.57.

In addition to the costs allowed under Rule 54(d), the defendant has submitted a request for costs and fees under Rule 30(g)(2) based on the plaintiffs, failure to properly subpoena witnesses noticed for deposition or otherwise adequately arrange for their attendance at the depositions in Costa Rica.[2] Because of the plaintiffs' failure, defendant Singlaub incurred the following expenses:

DATE	DESCRIPTION	AMOUNTS
5-1-88	Airfare Miami/San Jose, C.R.	$ 280.00
5-1-88	Departure Tax	10.00
5-1-88	Attorney's Fees/Preparation for Depositions	400.00
5-2-88	Attorney's Fees/Wasted Day	800.00
5-2-88	Two Meals	14.00

[2] The transcript of the deposition demonstrates that the plaintiffs did not take the appropriate measures to insure the witnesses' attendance at the deposition. The court finds that Rule 30(g)(2) of the Federal Rules of Civil Procedure applies and the plaintiffs should compensate the defendants for these unnecessary expenses.

5-2-88	Transcript of Proceedings and Appearance	127.50
5-4-88	Hotel Bill	105.00
5-4-88	Cab ride to airport	10.00
5-4-88	Departure Tax	4.50
5-4-88	Airfare San Jose/Miami	280.00
5-4-88	Attorney's Fees/Travel Time	400.00
7-8-88	Attorney's Fees/Preparation of this Motion	100.00
	TOTAL	$2,531.00[3]

The court grants all of these expenses, so the defendant's total amount allowed is $49,061.57.

10. THEODORE SHACKLEY

Defendant Shackley has filed a Bill of Costs for $20,330.06. The defendant requests the court to tax the following as costs:

DISBURSEMENT	AMOUNT
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	$795.50
Fees for witnesses	35.00
Fees for exemplification and and copies of papers necessarily obtained for use in the case	8,072.14
Computer legal research	5,189.99

[3] The attorneys' fees listed here will be deleted from the court's consideration in awarding attorneys, fees in section B of this order.

Travel	2,043.11
Telephone and telecopier	963.59
Postage and delivery	1,601.68
Staff overtime	615.30
Interlibrary loans	153.83
Miscellaneous	859.92
TOTAL DISBURSEMENTS	$20,330.06

Section 1920 does not provide for computerized legal research,[4] travel expenses, telephone, telecopier, postage, delivery, staff overtime, interlibrary loans, nor miscellaneous requests, so the court denies these amounts. Defendant Shackley, therefore, is entitled to the remaining items totalling $8,402.14.

B. ATTORNEYS' FEES

As stated in the introduction, the court has also decided to award attorneys, fees to the prevailing defendants.[5] The court, therefore, now must determine a reasonable hourly rate for each defendant's attorney and assess the time claimed by the attorneys. Norman v. Housing Authority of City of Montgomery, 836 F.2d 1292, 1303 (11th Cir. 1988). The decision regarding the appropriate hourly rate may be made either by analyzing the affidavits submitted by counsel or, if this documentation is insufficient, by relying upon the court's expertise. Id. at 1304. Likewise, the determination of hours reasonably expended may be based on

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[4] See also Roberts v. Charter National Life Ins., 112 F.R.D. 411 (S.D. Fla. 1986).

[5] This award is made coextensively pursuant to the "bad faith" exception to the American Rule, see Alyeska Pipeline Service Co., 421 U.S. 240 (1970), 28 U.S.C. § 1927 (1986), and Fed.R.Civ.P. 11.

documentation or, if this evidence is inadequate, the court's own exprience. With these principles in mind, the court will address each defendant's request.

1ADOLFO CALERO

The law firm that represented defendant Calero has requested fees totalling $57,676.75. Based on an affidavit filed by an attorney not affiliated with the firm, the court finds that the rates attributed to the three lawyers are reasonable by comparison in this legal community. Specifically, the rates of $150.00 per hour for an attorney with eight years experience, $200.00 per hour for a lawyer with eighteen years experience, and $85.00 per hour for a newly admitted attorney are reasonable.

In addition to finding the hourly rate reasonable, the court also believes that the time claimed is reasonable. Although the attorneys have not specifically documented the hours expended, the court's experience with this case and similar cases compels the court to find the total award reasonable. The court inferentially finds the hours worked reasonable. Defendant Calero, therefore, is entitled to $57,676.75 in attorney's fees.

2. JOHN HULL

The attorney for John Hull apparently charged the client based on a local rate of $100.00 per hour and an out-of-town rate of $150.00 per hour. The court, in its experience, disallows the differential rates and, consequently, applies the local rate of $100.00 per hour to all of the attorney's entries. The detailed entries reasonably portray the amount of hours expended by the attorney. Based on the uniform rate of $100.00 per hour, defendant Hull is entitled to fees totalling $67,380.00.

3. MOISES NUNEZ RUIZ

Counsel for the defendant filed an affidavit that states he has been admitted to practice in Florida for approximately 13 years and charges $150.00 per hour. The court, again, finds this hourly rate reasonable. Counsel has also clearly identified the services he has rendered for his client. The itemized services bill indicates that counsel spent a reasonable amount of time on the case, so the court awards attorney's fees in the amount of $4,913.52.

4. ROBERT OWEN

Defendant Owen, represented by a District of Columbia law firm, requests attorneys fees totally $67,509.10. Several attorneys within the law firm represented Mr. Owen, but 94% of the work was performed by an attorney with 13 years of experience, who charged initially $135.00 per hour and ultimately $165.00 per hour. The court finds these rates reasonable based on the attorney's experience and the locale in which he practices. Moreover, the court, after reviewing the time sheets, finds the number of hours expended to be reasonable. Mr. Owen, therefore, is entitled to $67,509.10 in attorneys' fees.

5. RICHARD SECORD

The affidavit submitted by counsel is fairly broad, but based on the documentation and the court's experience, the requested amount for attorneys' fees is reasonable. Specifically, the range of hourly rates was between approximately $75.00 per hour to $190.00 per hour. Moreover, in light of the multiple appearances of counsel and numerous documents filed in this case, the number of hours expended by the law firm is reasonable. The court,

consequently, awards attorneys' fees totalling $109,854.00.

The defendant has also requested $16,742.67 for attorneys' fees based on a consultation with another law firm regarding RICO law. The request, however, only states that the fees total $16,742.67. The request does not mention an hourly rate nor hours expended. Despite the court's expertise, it cannot merely guess at an appropriate amount. This request, therefore, is denied.

6. RONALD MARTIN, JAMES McCOY and MARIO DELL AMICO

One law firm represented all three defendants in this litigation. The rates for the attorneys in this case range from $65.00 per hour for associates to $225.00 per hour for a senior partner. The court finds these rates reasonable. With respect to the time billed, the one-inch thick stack of the billing sheets more than adequately details the activities of all of the attorneys involved. The court, therefore, grants the request for fees totalling $79,336.88.[6]

RAFAEL QUINTERO, THOMAS CLINES, and ALBERT HAKIM

All three defendants were represented by one law firm. Additionally, Quintero retained separate trial counsel. The documents in the case, including the motion for attorneys' fees, were signed by the law firm representing the three defendants. Consequently, based on the previous filings of the attorneys and their appearances in court, the court can

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[6] This amount reflects a $640.50 deduction from the defendants, request because of two accidentally placed billing entries.

supplement the inadequate affidavit of the firm that represented all three defendants. Moreover, the attached affidavit regarding hours worked and hourly rates is consistent with the court's experience and the other defendants' requests. Conversely, the affidavit submitted by trial counsel for Quintero is insufficient and the court is unfamiliar with counsel because the case did not proceed to trial. The request for fees for trial counsel, consequently, is denied. The court, however, does award Quintero, Hakim and Clines $89,984.40 in attorneys' fees.

8JORGE GONZALEZ

The court is confronted with another insufficient affidavit regarding hours worked and hourly rate. The court, again relying on its experience and expertise, finds the attorneys' hourly rate and hours expended reasonable. Consequently, the request for 283.9 hours at $150.00 per hour totalling $42,585.00 is granted.

9. JOHN SINGLAUB

Singlaub's attorney filed forty-eight pages of billing sheets detailing the tremendous number of hours expended in this case. Moreover, the documentation and accompanying affidavits indicate that the attorneys charged reasonable hourly rates of $100.00 per hour for associates and $175.00 per hour for partners. Combining these hourly rates with the 2062 hours expended in the case, defendant Singlaub is entitled to $297,446.75 in attorneys' fees. Because the court previously awarded $1,200.00 of these fees under Rule 30(g)(2), the amount awarded here is reduced to

$296,246.75.[7]

10. THEODORE SHACKLEY

Defendant Shackley hired a Washington, D.C. law firm to represent him in this action. The law firm has complied with every requirement of Norman. Specifically, the attorneys have fully detailed the activities of the lawyers involved in the case and listed the hourly rate of each attorney.[8] Moreover, the fee petition is "well-prepared" because it includes a summary of each attorney's hours and a monthly listing of fees. See Norman, 836 F.2d at 1303. In light of the reasonable hourly rates and reasonable hours expended, the court awards defendant Shackley attorneys' fees totalling $139,844.10.

11. THOMAS POSEY

Defendant Posey, currently representing himself, has filed a motion for attorney's fees with the amount to be determined at a later date. Because the defendant is pro se, the court will allow him until February 24, 1989 to file an itemized description of his previous attorney's hourly rates and hours expended on this case.

Based on the previous discussion, the court ORDERS and ADJUDGES that the defendants are entitled to the following amounts:

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[7] Defendant Singlaub also retained two other lawyers. Unlike the attorneys awarded approximately $300,000.00, these attorneys did not provide the court any basis to determine an appropriate award. Their requests, therefore, are denied.

[8] The attorneys have also attached an affidavit stating that the hourly rates are reasonable in these types of cases.

ATTORNEYS' FEES		COSTS	TOTAL
CALERO	$57,676.75	$1,427.40	$59,104.15
HULL	67,380.00	2,661.45	70,041.45
NUNEZ RUIZ	4,413.52	736.85	5,150.37
OWEN	67,509.10	5,663.90	73,173.00
SECORD	109,854.00	5,208.40	115,062.40
MARTIN, McCOY, DELAMICO	79,336.88	4,373.85	83,710.73
QUINTERO, CLINES, HAKIM	89,984.40	1,167.00	91,151.40
GONZALEZ	42,585.00	798.30	43,383.30
SINGLAUB	296,246.75	49,061.57	345,308.32
SHACKLEY	139,894.10	8,402.14	148,296.24
TOTAL	$954,880.50	$79,500.86	$1,034,381.36

FURTHER ORDERS and ADJUDGES that defendant Posey has until February 24, 1989 to file the appropriate documentation for determining the amount of attorneys' fees.

Let execution issue.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Courthouse Square, Miami, Florida this 2nd day of February, 1989.

JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 86-1146-CIV-KING

Entered on February 24, 1989
Reported as Avirgan v. Hull,
125 F.R.D. 189 (S.D.Fla. 1989)

Tony AVIRGAN and Martha Honey

Plaintiffs,

v.

John HULL, et. al.,

Defendants.

ORDER CLARIFYING ORDER DATED FEBRUARY 2, 1989

Defendants bring a motion to clarify this court's order of February 2, 1989. They seek to determine against whom the fees and costs where awarded. The plaintiffs have responded by arguing that a procedural bar divests this court's jurisdiction to reconsider this order.

The court finds no merit to the plaintiffs' contentions. They argue that their filing of a notice of appeal immediately divests this court of all jurisdiction over the order that is the subject of the appeal. Aside from the fact that this argument runs contrary to Fed. R. App. P. 12 and

established precedent, the record reflects that the notice of appeal was actually filed the same day the motion for clarificationwas. Accordingly, the notice of appeal could not in fairness to all parties preempt this court's consideration of a motion filed that same day. Accordingly, the court will address the issues raised in the defendants' motion.

As this court's order dated February 2, 1989 fairly indicates, liability for the costs and fees must rest jointly and severally with Daniel Sheehan, Esq., The Christic Institute, and the plaintiffs, Tony Avirgan and Martha Honey. The court now addressed the reasons underlying this decision.

As a preliminary matter, the court notes that the plaintiffs
are confused over the court's use of the word "coextensively" in its February 2, 1989 order. In footnote 5 of that order, the court indicated that the award was made "coextensively" pursuant to the "bad faith" exception, 28 U.S.C. § 1927, and Fed. R. Civ. P. 11. This language indicates that each of these authorities, separate unto itself, support the entire award. Of course different legal standards govern the award under each authority. The court applied these differing standards and found that the entire award was supported in toto by Fed. R. Civ. P. 11, in toto by 28 U.S.C. § 1927, and in toto by the "bad faith" exception. Essentially, the award mechanism is logical, for an award pursuant to the "bad faith" exception or 28 U.S.C. § 1927 necessarily implies an award under Fed. R. Civ. P. 11 where many of the reasons for the bad faith award center around or relate back to signed pleadings that violated Fed. R. Civ. P. 11.

Daniel Sheehan, Esq. must be liable. He was lead counsel for the plaintiffs. He formulated and put into motion the litigation strategy and tactics that justified the entire award under the bad faith exception and 28 U.S.C. §

1927. He also signed the complaint and affidavit upon which the court justified the entire award under Fed. R. Civ. P. 11. Moreover, as lead counsel, he neglected his continuing obligation under all three authorities to assure that the allegations in the complaint and in the affidavit were borne out in the discovery process. Mr. Sheehan is liable for the entire amount.

Similarly, The Christic Institute should be liable for the costs and fees. Mr. Sheehan, The Christic Institute's General
Counsel, acted on behalf of the Institute. The Institute was the self-pronounced law firm representing the plaintiffs. Its attorneys carried out Mr. Sheehan's litigation strategy, and willingly participated in the litigation tactics. The Institute's name appears on all or most of the plaintiffs' filings. Moreover, because it acted through its officers, the attorneys representing the plaintiffs, the Institute must be held accountable for its agents' neglect of their continuing duty under all three authorities to avoid this frivolous lawsuit. The Christic Institute is liable for the entire award.

For like reasons, the plaintiffs, Tony Avirgan and Martha Honey, should be liable for the entire awa d. Admittedly, Honey and Avirgan cannot be liable unde. Fed. R. Civ. P. 11 or 28 U.S.C. § 1927 because they are not attorneys. Nevertheless, they were willful participants in Mr. Sheehan's litigation strategy. The Christic Institute paid them approximately $50,000.00 for consultation, public speaking, and trips from Costa Rica to the United States. See Shackley's motion for sanctions and fees, Exhibit D (Avirgan Deposition at p. 297-302; Honey Deposition at p. 211-13). The plaintiffs, therefore, are liable for the award of costs under the bad faith exception, which is, the entire award.

Because Daniel Sheehan, Esq., The Christic Institute,

and the plaintiffs are all liable for the award, they are jointly liable. Moreover, because each contributed to the actions in the defined manners, this liability is also several. Consistent with this opinion, the court

ORDERS and ADJUDGES that the award of fees and costs delineated in this court's order dated February 2, 1989 shall be paid by the plaintiffs Tony Avirgan and Martha Honey, the Christic Institute, and Daniel Sheehan, Esq. jointly and severally.

DONE and ORDERED in chambers at the United States District Courthouse, Federal Courthouse Square, Miami, Florida this 24th day of February, 1989.

JAMES LAWRENCE KING
CHIEF U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-5720; 89-5143; 89-5232; 89-5515

Entered 9 September, 1991

Tony AVIRGAN et al.,
Plaintiffs-Appellants,
vs.

John HULL, et al.,
Defendants-Appellees,
Bruce Jones, et al.,
Defendants.

Tony AVIRGAN, et al.,
Plaintiffs-Appellants,
Daniel P. SHEEHAN and The Christic Institute,
Non-Party-Appellants,
vs.

John HULL, et al.,
Defendants-Appellees,
Rene Corbo, et al.,
Defendants.

On Appeal from the United States District Court for the
Southern District of Florida

ON PETITIONS FOR REHEARING AND SUGGESTIONS OF REHEARING EN BANC (Opinion June 18, 1991, 11th Cir., 1991, ____F.2d____)

Before HATCHETT and BIRCH, Circuit Judges, and RONEY, Senior Circuit Judge.

PER CURIAM:

The Petitions for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestions of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Joseph W. Hatchett
UNITED STATED CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 86-1146-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.

_____/

AFFIDAVIT OF DANIEL P. SHEEHAN
IN OPPOSITION TO DEFENDANTS'
MOTIONS FOR FEES, SANCTIONS, AND
COSTS, AND IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR SANCTIONS
PURSUANT TO FED. R. CIV. P. 11

Washington, DC
September 12, 1988
The Christic Institute
Daniel P. Sheehan,
General Counsel
Attorney For Plaintiffs

DISTRICT OF COLUMBIA) SS:

Daniel P. Sheehan, being duly sworn, deposes and says:

1. I am General Counsel of the Christic Institute,

attorney for the Plaintiffs in this action. I submit this affidavit in opposition to the motions by Defendants Singlaub, Shackley, Hull, Owen, Calero, Secord, Quintero, Clines, Hakim, McCoy, Dell Amico, Martin, and Nunez for Rule 11 sanctions, costs and attorneys fees, and in support of Plaintiffs' cross motion for Rule 11 sanctions against Defendant Singlaub, his attorney, Thomas Spencer, John Hull and his attorney, Edwin Smith.

2. As argued more extensively in the accompanying Memorandum of Law, and as documented in the following paragraphs, the Defendants' goal since the filing of this lawsuit has been to wage war against the Plaintiffs and the Christic Institute, win it, and then seek "reparations" in the form of fees, costs, and sanctions. In order to accomplish this goal, they have refused to comply with the Federal Rules of Civil Procedure, Court orders, threatened and intimidated Christic investigators and process servers, as well as witnesses for the Plaintiffs. Their entire discovery strategy has been geared toward discrediting the Plaintiffs and their counsel instead of responding to the substance of their filings. Defendants have waged a public relations campaign designed to smear the Institute's staff, and to precipitate the revocation of the Institute's tax exempt status. Defendants are entitled to no fees, costs, or sanctions in law or in equity.

I. At this Time The Court Should Determine Only Whether or Not Plaintiffs are Entitled to Fees and Other Relief

3. Defendants seek compensation for all their costs and legal fees pursuant to a variety of statutes and principles. The accompanying Memorandum of Law sets forth the relevant distinctions among these sources of authority, and argues that due to the lack of specificity in the Defendants' applications, even if the Court were to find

that Defendants were entitled to any fees or costs, none could be assessed until Defendants meet their burden of submitting a more precise accounting of the basis for the hourly rates sought, a more precise description of the compensable activities, and identification of the specific claim that each activity relates to as well as a more detailed accounting of the costs incurred.

4. In late August, Plaintiffs sent letters to all but one counsel for the moving Defendants seeking more precise information. (Exhibits A to G attached hereto). Only the attorneys for Singlaub, Shackley and McCoy, Martin and Dell Amico replied, and they provided no information. (Exhibit H).

I. Rule 11 Sanctions: Motion and Cross Motion

A. Defendants Are Not Entitled to Rule 11 Sanctions.

5. Defendants, in spite of their own misconduct, seek sanctions against Plaintiffs pursuant to Rule 11 of the Federal Rules of Civil Procedure. In pertinent part, Rule 11 provides as follows:

> Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorneys individual name.... The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading motion or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose .... if a pleading, motion or other paper is signed in violation of this

> rule, the Court ... shall impose upon the person who signed it, a represented party or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing ... including a reasonable attorneys fee.

6. The pleadings put at issue by the Defendants' motions are the Amended Complaint dated October 4, 1986, the Affidavit of Daniel P. Sheehan dated December 12, 1986, and the Declaration of Counsel, dated March 25, 1988.

7. In an order dated October 5, 1987, this Court formally ruled that, as of that date, none of Plaintiffs' motions or pleadings violated Rule 11 standards. (D. 438). Defendants have ignored this finding and persist in efforts to have the Court impose Rule 11 sanctions as to the two pleadings and papers which predate this order, the amended complaint and the December 12, 1986 Affidavit.

1. The October 4, 1988 Amended Complaint

8. On September 5, 1986, this Court granted Plaintiffs leave to file an amended complaint (D.75), and Plaintiffs did so on October 3, 1986. One Defendant, Andrew Messing, was dropped from the October amended complaint because Plaintiffs' investigations showed that his inclusion as a Defendant would require a separate, although supportable, legal theory.

9. Subsequently, nine defendants moved to dismiss the amended complaint, but their motion was denied on January 30, 1987. (D. 184). In its January order, the Court found that Plaintiffs had adequately alleged the essential elements of a RICO claim: predicate acts, a pattern of racketeering activity, and enterprise, and that the Court had personal jurisdiction over the moving Defendants. Count VI of the amended complaint (tortious interference with a

business relationship) was dismissed. (Id.).

10. Although Defendant Singlaub moves for Rule 11 sanctions as to the amended complaint, he concedes that its allegations stemmed from the investigations of the Christic Institute (Defendant Singlaub's Motion for Sanctions, Excessive Costs and/or Attorneys Fees, p. 10). Further, Singlaub is, or should be, aware of the publication entitled La Penca, which is a 36 page report written by Plaintiffs detailing their investigation of the La Penca bombing. (Exhibit I). In point of fact, prior to the filing of the complaint, I interviewed numerous witnesses, reviewed scores of government documents, and consulted books and news reports to confirm facts and identify witnesses.

11. Defendants Martin, McCoy and Dell Amico contended, although not citing specifically to Rule 11, that the "Plaintiffs never laid out a dime for the lost camera" so that the RICO claim is a sham. (Martin, McCoy and Dell Amico's Motion for Attorneys Fees and Costs and Adoption of Defendant Singlaub's Motions, p. 1) Singlaub appears to have contended the same. (Singlaub Motion for Sanctions, Excessive Costs and/or Attorneys Fees, p. 11). However, Plaintiffs or counsel are not subject to Rule 11 sanctions for this reason because they have a good faith legal basis for contending that there is a RICO injury under existing law. See accompanying Memorandum of Law.

12. Other Defendants, such as Owen (Legal Memorandum in Support of Defendant Owen's Motion for Costs and Attorneys Fees, p. 9), Hull (Motion of Defendant Hull for Sanctions, costs, Expenses and Attorneys Fees and Adoption of Co-Defendants' Motions, p. 4), Secord (Motion of Defendant Richard V. Secord for Attorneys Fees and For Sanctions, Excessive Costs and/or Attorneys Fees, p. 2), Quintero, Clines and Hakim (Motion of Defendants Rafael Quintero, Thomas Clines, and Albert Hakim and for Sanctions, Excess Costs, and/or Attorneys Fees, p. 2), Shackley (Motion of Defendant Shackley for Sanctions and

Attorneys Fees, p. 4) generally assert that there was no factual or legal support for the action, but fail to - and could never show substantively - that there was no investigation of the claims of this case. As set forth in the accompanying Memorandum of Law, they have failed to meet their burden of establishing a Rule 11 violation.

13. What is more egregious is the fact that each of the moving Defendants actively resisted discovery, and actively defied orders compelling discovery responses. They cannot now come forward and say there was no evidence.

2. The December 12, 1986 Affidavit

14. As noted above, various Defendants moved to dismiss the amended complaint, in part, on the ground that Plaintiffs failed to set out an adequate specific factual basis for allegations of racketeering activity sufficient to support a showing of probable cause. See e.g., Motion of Defendant Calero to Dismiss the Third [sic] Amended Complaint (D.107) and memorandum in support thereof. (D. 108, at 8-12). In support of his motion, Calero cited a narrow line of federal district court cases holding that such probable cause specificity was required in the pleading of a civil RICO complaint which sounded in fraud.

15. Plaintiffs, only in response to this legal assertion, then filed the December 12, 1986 Affidavit in order to demonstrate to the Court that they could make a sufficient showing of probable cause - if the Court so required. The Affidavit set forth information generated through the investigation undertaken by Plaintiffs' counsel in anticipation of filing this litigation. The Affidavit described the steps taken by counsel and their investigators to demonstrate the manner in which the Defendants were discovered to be part of a RICO enterprise. This Affidavit did not purport to be a compendium of the directly admissible, first-hand, evidence needed to convict the

Defendants, as they were to later insist it must be.

16. The Court denied Defendants' motions to dismiss, holding that probable cause specificity was only required in RICO cases which sounded in fraud. Since Plaintiffs' RICO complaint did not allege fraud, probable cause was not required. (D. 184, at 12). The Affidavit, which was specifically filed as a proffer in the event the Court required probable cause specificity, then became superfluous for the purposes of the case. The Defendants then demanded that this Court strike the December 12, 1986 Affidavit from the record as no longer pertinent. This Court refused to do so.

17. However, the Defendants immediately seized upon the Affidavit as a discovery tool and attempted to elicit the names of the unnamed investigative sources listed in the Affidavit. Many of these sources were not individuals with knowledge, first-hand or otherwise, of the activities of the defendants. Such sources were included in the document solely for background purposes. As I stated in a hearing before this court on December 22, 1987:

> What we did, is we set forth in general description the nature of the people that we had been speaking with in our preliminary investigation. (D. 586, at 9).

The Affidavit was never intended to be a witness list for trial or a list of individuals with direct knowledge of the activities of the Defendants. Litigation as to the Affidavit should have ceased at the time Defendants lost their motion to dismiss in January, 1987.

18. Indeed, the District Court of the District Columbia recognized it was inappropriate to belabor the issue of sources by quashing the subpoena to take my deposition on April 12, 1988. (Exhibit J)

19. Instead, Defendants Singlaub, Owen and Shackley now use the December 12 Affidavit as a basis for

their Rule 11 motion.

20. By a reading of both Defendant Singlaub's Motion for Attorneys Fees served July 8, 1988 and Defendant Singlaub's undated Motion for Sanctions, Excessive Costs and/or Attorneys Fees, it appears that Singlaub takes issue with an allegation in the December Affidavit that when I.W. Harper was with John Singlaub and Robert K. Brown, he went to Central America to train people to make C-4 bombs. At page 8 of the "Motion for Attorneys fees", Singlaub included an excerpt from the deposition of Gene Wheaton (Source 24) in which Wheaton denies making a particular statement in the affidavit linking Harper to Amac Galil, Singlaub refuses to include the excerpt from the redirect examination of Gene Wheaton which states that I. W. Harper had told Wheaton that when Harper was with Singlaub and Robert K. Brown, he (Harper) had gone to Central America to train people to make C-4 bombs. Wheaton Deposition dated March 8, 1988, at 1092. Wheaton also testified that when Harper was asked about the La Penca bombing he became agitated and stated that the reporters who were there probably got what they deserved, (Id. 1082), and that he (Wheaton) also recalled discussions with me regarding the meaning of Harper's statements and behavior. (Id. 1084). In further conversations with Wheaton, I recall his opining that Harper must have met with Galil.

21. Further, the deposition of Robert Owen, corroborates Wheaton's statement that Harper was working for Singlaub. (See Owen deposition dated February 28, 1988 at 196, 198, 468-469, 472, attached hereto as Exhibit K).

22. Singlaub also contends that an affidavit of Carl Jenkins demonstrates that many of the allegations contained in the Affidavit and amended complaint were not grounded in fact. (Singlaub's Motion for Sanctions..., p. 10). This Affidavit was included as Exhibit D 1 to the Renewed Motion for Summary Judgment of Defendant Shackley.

Singlaub fails to document his bald assertion that the Affidavit "clearly demonstrates that many of the allegations" contained in the affidavit were simply not grounded in fact.

23. The Affidavit of Carl Jenkins, drafted by Secord's Counsel, is carefully phrased: Jenkins does not deny the knowledge attributed to him, only that he lacks direct personal knowledge. For a more detailed discussion of the Jenkins affidavit, see paragraph 74 below.

24. Singlaub next asserts that the Affidavit of I. W. Harper further indicates the untruthfulness of the December 12 Affidavit. Essentially the Harper affidavit denies all the allegations in the Affidavit. Harper, however, does not deny that Gene Wheaton informed me that Harper had told Wheaton that Harper had trained contras in the use of C-4. It was Gene Wheaton's information which formed the good faith basis for the allegations concerning Harper. Further, Robert Owen corroborated the fact that Harper was working for Singlaub, and that his area of expertise was munitions and explosives. (Exhibit K, pp. 196, 198, 468-469, 472).

25. The next alleged violation of Rule 11 is mounted by both Singlaub and Owen. They contend that the names of some of the sources for allegations contained in the Affidavit were unknown. (Legal Memorandum in Support of Defendant Owen's Motion for Costs and Attorneys Fees, p. 8; Affidavit of Thomas R. Spencer ... pp. 3, 4, 7).

26. This point was unsuccessfully argued by Defendants on two prior occasions: the December 22, 1987 hearing before this Court and the March 18, 1988 hearing before Magistrate Turnoff.

27. No authority is cited to show that not having a present record of names of sources is a violation of Rule 11; no facts are cited to show that the information is inaccurate; and no showing is made of any injury to Defendant Singlaub stemming from those allegations. As was stated to the Court, these "investigative sources" merely

directed counsel to information which, in turn, led counsel to the sources who possessed information incriminating the Defendants. Those latter sources are named.

28. Singlaub also contends that Brian Barger refused to confirm the veracity of statements attributed to him. This is incorrect. (Spencer Affidavit, p. 4). Barger only stated that I had not attributed to him any allegations against Defendant Shackley, and that with regard to other matters, he would invoke a First Amendment privilege and refuse to reveal the sources of his information. (Exhibit L). Barger's letter also notes that errors in statements I attributed to him were corrected in a revised Affidavit.

29. The Affidavit of Thomas Spencer next contends at p. 4 that Michael Barger Hirsch claimed at his deposition that he was not a source for statements attributed to him in the December 12 Affidavit.

30. It is essential to note that the Hirsch deposition was taken with insufficient notice to Plaintiffs. They had no opportunity to object to the form of questions put to the witness, and no opportunity to cross examine. (Exhibit M). The deposition should not therefore be considered by the Court. This is a particularly important consideration because at the deposition Hirsch was asked whether or not he had given me any information regarding national security planning for which he might be reprimanded. Had Plaintiffs received proper notice and been able to attend the deposition, they would have established on the record that Hirsch had a motive to deny. In addition, Plaintiffs would have had the opportunity to question Hirsch about the fact that when I described to Hirsch certain details of Rex 84, he looked shocked and stated, "How did you find that out?" The reasonable inference from this statement is that the information was accurate.

31. Finally, the statement attributed to Hirsch in the December Affidavit did not relate to Defendant Singlaub in any way and it was what Hirsch said to me.

32. The Spencer Affidavit contends at p. 4 that Jack Terrell "refused to confirm" the veracity of the statements reported to have been made to me in the December Affidavit. What happened was simply that at his deposition, Jack Terrell invoked the Fifth Amendment in response to such questions as whether he knew General Singlaub (p. 31), and whether he met Thomas Posey, as stated in the December 12 Affidavit. (p. 24). Moreover, Terrell had made sworn statements in Court in Costa Rica containing some of this information.

33. Spencer next contends at p. 5 of his affidavit that the December Affidavit alleges that the La Penca bombing was planned by John Hull and others supplied with C-4 explosives by Defendants Tom Posey, John Hull and Bruce Jones, but that evidence submitted to Court proves that there was no such evidence. The Court's adverse ruling on a summary judgment motion does not demonstrate that allegations made in a prior pleading were not made in good faith. It should be noted in this connection that one issue raised by Plaintiffs on appeal is that the Court decided the summary judgment motions based entirely on issues not raised by Defendants, and as to which Plaintiffs were not given the opportunity to submit the evidence available to them on those issues.

34. At page 5 of the Spencer Affidavit, he asserts that facts attributed to Plaintiffs in paragraph 42 of the December Affidavit are untrue. The fact is that the facts alleged in paragraph 42 are attributed to Plaintiffs and sources who were in direct contact with them. (Emphasis added.)

35. Plaintiffs' source David is said not properly to be a "source" because I never personally interviewed him, (Spencer Affidavit, p. 6). The December Affidavit fully discloses all that is known of David's identity and how information was obtained from him. The Affidavit does not state that I interviewed David. Spencer also argues that a

telephone conversations with a source, such as the telephone conversation Plaintiffs had with David is insufficient to "confirm" a source's existence or his name. There is no reference to this esoteric point in his legal memorandum. Further, as is clear from the La Penca Report (Exhibit I), Carlos had several face to face meetings with David and communicated information obtained at those meetings to Plaintiffs. Carlos also testified to these meetings in his deposition.

36. Mr. Spencer uses excerpts from an uncertified translation of an interview of Harry Barrantes, an acknowledged liar[1], to contend that facts attributed to Barrantes in the Affidavit, are "unsubstantiated" by him.

37. The Spencer affidavit contends, at p. 8, that sources, including Eden Pastora have more than one number. He fails to explain why this is violative of Rule 11.

38. Spencer asserts, but does not demonstrate, that paragraphs 59 and 60 conflict with paragraphs 40 and 41.

39. With regard to the contention in the Spencer affidavit (p. 8) that Paul Hoven denied statements attributed to him, a review of the Hoven Affidavit reveals that, in actuality, Hoven denies statements attributed by the Plaintiffs to Gene Wheaton. Hoven does not deny having introduced me to Gene Wheaton or any of the other facts attributed to him in the Affidavit.

40. Spencer next complains that Gene Wheaton, a professional criminal investigator for the U. S. Military, was described in the Affidavit as a US intelligence officer. (Affidavit, p. 8). Again Spencer does not explain how such

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[1]. Paragraph "6" of the first page of Exhibit "G" to the Spencer affidavit, reads in part: "Barrantes told the Avirgans that Rojas was being secretly protected by his people after they asked for help in protecting Rojas. In reality, Barrantes never called in for help ...."

a minor error in job title violates Rule 11.

41. Further, it is contended that Wheaton had no first hand knowledge but that the Affidavit clearly represents that it is based on first hand knowledge. (Spencer Affidavit, p. 9). The Spencer affidavit fails to point to any paragraphs which contain false representations of first hand knowledge. In fact, Mr. Wheaton did have first hand knowledge of the Contra resupply effort from his direct contact with Vaughn Forrest, another deponent.

42. It is next asserted that one General Brett never talked to me. This is true. General Brett gave information to Gene Wheaton which was communicated to me through Gene Wheaton. This does not mean that General Brett was not a "source" of information as indicated in Counsel's affidavit.

43. Mr. Spencer next claims that Source 53 never confirmed facts attributed to him in paragraph 63 of the December Affidavit, and that I set up a process that resulted in the revelation of the CIA affiliation of this man, imperiling his life. This statement is unconscionable. First, the December Affidavit does not specify which facts were confirmed by Source 53. Ferguson only denies that he has knowledge of the activities of Shackley, while paragraph 63 concerned both Shackley and Clines. The December Affidavit stated clearly that this source was an active agent of the CIA. His identity was revealed solely because Defendants pressed their claim to compel Plaintiffs to identify this source. To now contend that this revelation is actionable by them indicates the intensity of their motivation to seek a means of punishing counsel for saving them.

44. Sources 55, 56, and 57, although they made no statements to me, were nevertheless "sources" of information conveyed to me.

45. Sources 61 and 62 did provide information to me as described.

46. Sources 63 and 64 were never interviewed by

me, but were interviewed by others who conveyed the information to me.

47. It is contended that sources 48, 49, 67, 68, 70 and 71 did not provide first hand knowledge of allegations against Defendants. (Spencer Affidavit, p. 12). The December Affidavit did not state that these sources did provide first hand information against the Defendants.

48. The key conceptual point is that Mr. Spencer continues to try to pretend that the December Affidavit was submitted to prove the case in chief, and argues that admissible proof of alleged criminal acts is not provided by these sources, therefore subjecting counsel to sanctions. (Spencer Affidavit, p. 12). However, at the same time, Spencer fails to demonstrate that any fact asserted is untrue. Instead, he merely submits affidavits from people who are alleged to have committed criminal acts in which the affiants deny the crimes.

49. An affidavit of Douglas Schlachter is attached to the Spencer Affidavit as Exhibit M, and in the affidavit Schlachter states that he has never spoken with me. That is correct. I obtained the information attributed to Mr. Schlachter from and FBI 302 report, a copy of which is annexed hereto as Exhibit N. However, Mr. Schlachter is properly the "source" of the substantive information at issue.

50. Spencer then states that neither Source 73 (Christine Simmons) nor 74 (Rep. Wilson) were interviewed by me. He states that Steven Carr is dead and that Carr did not attest to facts attributed to him during his life. Simmons and Wilson were "sources" of information and were named by Schlachter in the FBI 302. And, Carr was alive on December 12, 1986 and did make the statements attributed to him.

51. It is next contended that the facts in paragraph 71 are unsupported by Sources 49 and 50. (Spencer Affidavit, p. 13)

These persons did support the information contained in

paragraph 71, although they did not proffer first hand knowledge of it.

52. Finally Mr. Spencer states that Eden Pastora, Cruz, and Angel Edmundo Solano had no facts concerning any Defendant other than Hull. (Spencer Affidavit p. 13). First Mr. Spencer is wrong. He has obviously failed to read the deposition of Eden Pastora. Second, his contentions are irrelevant because the Affidavit was submitted to the Court before discovery began in this case in connection with a very narrow issue: pleading requirements under RICO.

3. The March 25, 1988 Declaration

53. Defendants Owen and Calero charge that the Declaration of Counsel dated March 25, 1988 (D. 661) violates Rule 11. (Calero's Motion for Attorneys Fees and Costs and Adoption of Co-Defendants' Motions, pp. 2,3; Owen, Legal Memorandum, p. 9) The Declaration is a 300 page document which contains over 1000 footnotes citing sources and authorities. As this Court is aware, that Declaration was submitted in support of Plaintiffs' Motion to Lift the Temporary Restrictions on Discovery restrictions established by this Court in its order dated July 30, 1987, and in support of Plaintiffs' Motion to Amend the Complaint. (D.369). This Court's order directed that Plaintiffs "establish" the claims which are alleged to have arisen during the time period from December, 1982 through November, 1986 in order to be permitted discovery in the case of activities which pre-dated December 1982.

54. Calero singles out two paragraphs in the Declaration and contends that Plaintiffs have no evidence to support these. However, good faith is the operative standard and not in hand possession of directly admissible evidence. Indeed Calero has been specifically requested for documents responsive to Plaintiffs' April, 1987 Document Request on the ground that they would be essential to defense of his

motion for Rule 11 sanctions against Plaintiffs. (Exhibit O). He refused to provide those documents.

55. Defendant Owen also misconstrues Rule 11 standards by contending that sanctions should be imposed against Plaintiffs stemming from the Declaration because Plaintiffs did not submit "admissible" evidence to support each contention. For such an argument, he and his counsel are subject to imposition of Rule 11 sanctions themselves.

B. Plaintiffs Cross Motion for Rule 11 Sanctions Against John Singlaub and his Attorney, Thomas Spencer, and Against John Hull and his Attorney, Edwin Smith, Should Be Granted.

56. It is apparent from the foregoing that Defendants' counsel, particularly Thomas Spencer, are themselves subject to Rule 11 sanctions, based on their submissions in support of fees, costs and sanctions.

1. John Singlaub and Thomas Spencer

57. Spencer admits that the lawsuit was the result of an investigation by the Christic Institute. (Motion for Attorneys Fees, p. 7; Motion for Sanctions, p. 10).

58. Spencer cites as proof of the inaccuracy of the December 12 Affidavit Gene Wheaton's denial of a quote from the Affidavit. (Motion for Sanctions, p. 10). But Spencer fails to disclose that on redirect examination of Gene Wheaton, Wheaton conceded the accuracy of the facts contained in that section of the Affidavit. (See paragraph 20 above.) This failure to disclose to the Court his knowledge of the contents of the deposition transcript constitutes a direct violation of Rule 11. Mr. Spencer was present at the deposition, and is fully aware of his effort to deceive the Court.

59. Spencer claims that the Jenkins affidavit

proves the inaccuracy of the December Affidavit. (Motion for Sanctions, p. 10). However, Spencer conceals from the Court the portions of the Jenkins deposition in which Jenkins conceded the truthfulness of statements contained in the December affidavit. Spencer also conceals from the Court portions of the Wheaton deposition in which Wheaton stated that, in Wheaton's presence, Jenkins confirmed certain facts to me which Jenkins "did not recall" saying to me. Tom Spencer was present at the Wheaton deposition when this was revealed to him. (See also paragraph 74 below).

60. It was totally inappropriate for Spencer to insist upon spending so much of his time litigating the "Rex 84 allegations" (Spencer Affidavit, p. 4) because they did not concern his client in any way. The fact that Spencer chose to take, and short-notice the deposition of Michael Barger Hirsch demonstrates, for example, that his goal was to obtain material for a Rule 11 motion - not to obtain evidence for his case.

61. Spencer contends, without merit that he is entitled to fees and sanctions because Plaintiffs are without standing since Avirgan's camera was insured. This issue is discussed in more detail in the accompanying Memorandum of Law.

62. The motion of Singlaub, brought by his attorney Spencer, has, at base, a prohibited purpose. The conduct of the defense of this case has been geared solely toward an attack upon and the imposition of sanctions against Plaintiffs' counsel and Plaintiffs themselves. Imposition of sanctions against either Plaintiffs or their counsel is unwarranted. Sanctions against Singlaub and Spencer are warranted, and should be granted.

63. If the Court should award Plaintiffs attorneys fees as opposed to a monetary fine in light of Defendants' Rule 11 violation, Plaintiffs seek leave to submit, within 15 days of any such order, an accounting of fees and costs necessitated by defense against this motion.

2. John Hull and Edwin Smith

64. Rule 11 sanctions should also be imposed against John Hull and his attorney, Edwin Smith. In the Motions of Defendant John Hull for Sanctions, Costs, Expenses and Attorney Fees and Adoption of Co-Defendants Motions, p. 6, Edwin Smith, counsel for John Hull, argues that he should be awarded costs under 28 U.S.C. 1919. This section allows awards of costs only where an action is dismissed as a matter of law. This action was not dismissed as a matter of law, and therefore this provision is inapplicable.

65. Plaintiffs seek a fine of $1,000 on each individual for the above violations of Rule 11. By the letter dated November 16, 1987, (attached hereto as Exhibit BB), Mr. Smith has directly demonstrated his contempt for this Court and is not entitled to any presumed "benefit of doubt" with respect to this cross motion.

III. Defendants' Claims pursuant to 28 U.S.C. 1927 Are Unwarranted.

66. Defendants also move pursuant to 28 U.S.C. 1927 which states in pertinent part:

> Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses and attorneys fees reasonably incurred because of such conduct.

67. Defendant Singlaub makes five claims of "multiplication", and Defendant Shackley makes two. All are meritless.

68. First, Singlaub contends that the size alone of the docket sheet shows that Plaintiffs multiplied the proceedings. Singlaub failed to specify which motions and

other papers and proceedings reflected on the docket sheet multiplied the pleadings. This per se argument is transparently without merit.

69. Second, Singlaub contends that Plaintiffs obstructed discovery by failing to reveal their sources. However, at a hearing held before the Honorable William C. Turnoff which I attended on March 18, 1988, Magistrate Turnoff specifically found no bad faith in Plaintiffs' resistance to divulging to Defendants the identities of certain their sources. (Exhibit OO). Plaintiffs have ordered the transcript of that hearing and seek leave of this Court to submit the transcript, upon its completion, in support of their response to Defendants' motions.

70. Third, Singlaub contends that the filing of the Declaration of Counsel on March 25, 1988 was unreasonable. Singlaub ignores the fact that the Declaration was filed in direct response to a specific requirement in this Court's order of July 30, 1987 that Plaintiffs establish their claims against Defendants prior to being permitted pre-1983 discovery or discovery outside of certain restricted subject matter areas between 1983 and 1986. (D. 369).

71. Fourth, Singlaub asserts that fund raising efforts by the Christic Institute were violative of the law as well as the publicity stemming from the case. Singlaub refused to mention that by order, dated November 27, 1987, this Court granted Singlaub's own motion for clarification and ruled that Local Rule 27A(7) was inapplicable to this case. (D. 519).

72. Fifth, Singlaub argues that an alleged oral statement made by one person employed by the Christic institute for a short period of time is violative of 28 U.S.C. 1927. As set forth in the accompanying affidavit of Sheila O'Donnell, Director of Investigations for the Christic Institute, the statement of the former employee, even if made, was not authorized by the Christic Institute, and was undertaken in direct contradiction to the specific instructions

given to him and was the subject of his leaving his employment at the Institute. (Exhibit P.)

73. Defendant Shackley contends that Plaintiffs' Counsel should be sanctioned because the lawsuit, which he says should have been only a personal injury claim, was used as a private Contragate investigation. The fact that the complaint was filed six full months prior to the Contragate scandal totally undercuts Shackley's argument. Further, Shackley, has ignored the finding by this Court that the RICO claim is the central claim of the lawsuit. (D. 184, p.14). Moreover, pursuant to the authority set forth in 18 U.S.C. 1964 (c), counsel for Plaintiffs assumed, to the extent possible, the role of private attorneys general in their conduct of the lawsuit. Notably, Shackley fails to demonstrate how Plaintiffs' attempts to investigate the facts of this case multiplied its proceedings in light of the Court authorized issues in the case. (See January 30, 1987 Order Denying Shackley's Motion To Dismiss.) (D. 184). Indeed, he simultaneously contends that the lawsuit lacked adequate investigative factual information and that the discovery investigation was improper.

74. Shackley next attaches the affidavit of Carl Jenkins, which falsely quotes me. I never made such a statement to Carl Jenkins or anyone else. Further, a review of the depositions of Carl Jenkins and Gene Wheaton, both of which are being filed with the Court in connection with Plaintiffs' opposition to Defendants' instant motions, is instructive:

> Jenkins was motivated to recant his statements to me because his business fell off after his associates realized that he had reported the secret dealings of some of his colleagues. (Deposition of Carl Jenkins, dated March 15, 1987 and filed with this Court on September 9, 1988, p. 330-331).

Jenkins testified that he told me that Quintero and Edwin Wilson and possibly others had tried to put together a support package for Somoza before he fell. (Id. 317-18). He also testified that Secord and Clines were supplying the Contras (Id. 134), and that he had the impression that Quintero worked for Clines. (Id. 123).

Gene Wheaton testified that he overheard Jenkins talking to Quintero on the phone regarding weapons shipments by Secord, Hakim and Quintero. (Deposition of Gene Wheaton dated March 1, 1988, p. 123).

Wheaton also testified that at a meeting with Wheaton, myself and a CIA official, Jenkins confirmed to the official the truth of Wheaton's statements about arms shipments by an enterprise involving the defendants. (Id. 332).

Wheaton heard Jenkins confirm to me that Shackley, Clines, Secord, and Hakim first began supplying explosives to the contras in 1979, and later in 1983 and 1984, shipments included C-4. (Id. 894).

Wheaton also testified that Jenkins told him that he was getting close to "black" operations affecting national security, and to back off. (Id. 341).

75. In sum, neither Shackley nor Singlaub has demonstrated any violation of 28 U.S.C. 1927. Neither they nor the other Defendants who have joined in the motions for costs of Shackley and Singlaub should be awarded any costs pursuant to this section.

IV. Defendants Are Not Entitled to Fees Pursuant to the

Bad Faith Exception to the American Rule.

76. The Court has inherent equitable power to award attorneys fees to the prevailing party when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Both Singlaub and Shackley move pursuant to this theory, and the other Defendants join in the claims and contentions of these Defendants.

A. Defendants Come to Court with Unclean Hands.

77. Defendants should be barred from any relief pursuant to the equitable power of this Court because, as illustrated in the succeeding paragraphs, they come to Court with unclean hands and are therefore not entitled to relief.

1. John Singlaub

78. Defendant Singlaub is not entitled to equitable relief from this Court. Since December 1987, he, his attorney and their organizations and supporters have mocked and derided this Court, misrepresented to the public their legal strategy and actions in the hope of raising money, red-baited and harassed Plaintiffs and their counsel, and by their rhetoric, particularly that of Singlaub, have appealed to the very worst anti-democratic impulses of their supporters.

79. In December 1987, a full page fund raising appeal appeared in Soldier of Fortune Magazine. (Exhibit Q). The ad was a letter from John Singlaub, who was seeking to fill the "warchest" of his organization, the United States Council for World Freedom. Singlaub's letter stated in part:

> I have been in many battles and faced many enemies, but never as I'm fighting now, with an empty gun and the hordes coming over the wall....

> If I were back in Vietnam in a firefight, then I'd ask for an airstrike to blow the bastards away. But to win this fight we need money. To fight the damned Christic Institute lawsuit takes money....

80. On November 7, 1987, Singlaub approved the establishment of a legal defense fund "designed to expose a 'cynical patchwork of deception' by the Left wing Christic Institute ...". (Exhibit R). In December, 1987, Singlaub announced an intention to file a "countersuit" against Plaintiffs, and formed another fund raising organization, "The Friends of John Singlaub" to raise $450,000 to $500,000. (Exhibit S).

81. To achieve its purposes, the "Friends" circulated a white paper entitled "The Christic Institute vs General John K. Singlaub: A Case Study in Character Assassination" (Exhibit T) in which, inter alia, the Christic Institute is compared to the Red Guards, and a consultant, who worked with the Institute on one occasion on an unpaid basis, is compared to Joseph Goebbels.

82. In another appeal, the General solicited funds for organization entitled the "General John K. Singlaub Defense Fund" stating, inter alia, "We want to show them [the Christic Institute] that even in our weak, wimpy, bizarre legal system, they cannot win." (Exhibit U).

83. Concurrently the "Singlaub Freedom Foundation" published "They Want to Kill Singlaub! A Study of the Movement by the Radical Left, The Christic Institute and Communist Groups to murder the person and character of a true American Hero". The "Study" concludes with an admonition to "remember the words of Adolf Hitler" and includes two quotations from Adolf Hitler, the last being:

> When I wage war ... in the midst of peace, troops

> will suddenly appear... They will march through the streets in broad daylight. They will march to the headquarters of the General Staff...Within a few minutes France Poland, Austria, Czechoslovakia, will be robbed of their leading men .. The confusion will be beyond belief. But I shall long have had relations with the men who will form a new government -- a government to suit me. (emphasis added).

(Exhibit V).

84. Singlaub's attorney then sent a letter soliciting funds for the legal fees of his client, payable to the very same "Singlaub Freedom Foundation". (Exhibit W). Among other items, Mr. Spencer states in two separate paragraphs of his fund raising letter that he is continually forced to fly witnesses in for depositions. I took many of the depositions in this case, and received reports of and reviewed the transcripts of other. There is no record of witnesses accompanying Mr. Spencer to the scores of depositions taken by Plaintiffs, and Defendants, as is well known, took very few depositions, and upon information and belief, did not fly in witnesses for their half dozen depositions. Nor, based on his responses to Plaintiffs' discovery requests did he take any polygraphs as alleged in the fund raising letter.

85. On June 16, 1988, a front page story in the Atlanta Constitution reported that John Singlaub and his attorney, Thomas Spencer, had recently met with conservative activists along with Jim Warner, a Senior Policy Analyst for Domestic Issues at the White House, in the wine cellar of a private club in Georgetown, Washington, DC to plot a strategy against the Christic Institute. Mr. Warner suggested that Martha Honey should be accused of abetting in the torture of American POW's in Vietnam during the Vietnam War, although he knew the allegation to be false. (Exhibit X).

86. Following issuance of the opinion by this Court on June 23, 1988, the Friends of General Singlaub went back into action. Law firms which had been assisting the Christic Institute on a pro bono basis received derisive mailings such as the one annexed hereto as Exhibit Y. At least two mailings contained excerpts from the above referenced "Study" containing the Hitler quotations.

87. On July 14, 1988, Tom Spencer issued a press release announcing, falsely, that he had filed a counter-suit against Christic on behalf of Singlaub. When a representative from the Christic Institute inquired about the alleged countersuit, he was informed that the release actually referred to the July 12, 1988 motion for fees before this Court. When asked why the inaccurate information was being promoted to the press, a spokesperson from the public relations firm which issued the press release with Mr. Spencer's approval said, "Mr. Spencer approved the wording of the press release."

88. Next, Defendant Singlaub called for August 2, 1988, a meeting in Washington, DC of a new organization known as the Victims of the Christic Institute. (Exhibit Z). The meeting's agenda, as stated on the published invitation, included a discussion of "what to do if the 11th U.S. District Court of Appeals in Atlanta decides to hear the Christic's civil lawsuit." Tom Spencer was to outline a "counter suit" strategy," even though his office had earlier acknowledged that there was no countersuit, merely a motion for fees.

89. Mr. Spencer has repeatedly contended that he and others associated with Defendant Singlaub have received threats, and blames these threats on the Christic Institute and Plaintiffs. I categorically deny that Plaintiffs or Christic Institute have been responsible for any threats. We have repeatedly asked Mr. Spencer and others who make such accusations to state the basis for their belief that any such threats are being made or that the Plaintiffs or their attorneys have anything to do with them. We have never

received replies to these requests. Mr. Spencer has also contended that his office is monitored by "sophisticated electronic equipment". This is preposterous, and Mr. Spencer knows that there is no support for this contention.

2. Theodore Shackley

90. Theodore Shackley also comes to Court with unclean hands. Not only did he resist every discovery effort of Plaintiffs and defy this Court's own discovery orders, he is now engaged in a public campaign to divest the Christic Institute of its tax exempt status. (Exhibit AA).

91. On January 4, 1988, after he had been ordered by the Court to do so on two prior occasions, Shackley produced three documents responsive to Plaintiffs' April 1, 1987 Document Request. He contended in his January response that the rest of the documents responsive to Plaintiffs' requests were subject to the attorney-client privilege. Despite Plaintiffs' request to do so, he never identified the allegedly privileged documents more fully to enable the Court to determine whether the documents were in fact privileged. Shackley just said no.

92. In effect Shackley never answered Plaintiffs' interrogatories either. Plaintiffs' motion to compel production of the remaining documents and answers to interrogatories was granted May 11, 1988. (D. 900). Shackley again said no, and moved for reconsideration. (D. 907). The merits of his motion were never decided prior to granting Shackley summary judgment. (D. 916). After deliberately withholding his evidence from Plaintiffs, Shackley now moves for fees on the ground that Plaintiffs' lawsuit lacks supportive admissible proof.

93. Not satisfied with flaunting the federal rules governing discovery and ignoring this Court's orders in order to win judgment, Shackley now exhorts others to seek removal of the Christic Institute's tax exempt status. (Exhibit

AA). He is not entitled to be heard by this Court.

3. John Hull

94. John Hull also said no. On May 11, 1988, he walked out of his deposition (D. 927), and refused to return. Plaintiffs received chiefly unsolicited documents in response to their April 1, 1987 Document Request. They made two successful motions to compel (D. 541 and 900), but still received no documents and only perfunctory responses to their interrogatories.

95. Hull's attorney, Edwin Smith, who seeks compensation from this Court, expressly recommended a non - compliant approach to discovery responses, and that is undoubtedly why Hull did not feel constrained to comply with Plaintiffs' requests. In a letter to his client dated November 16, 1987, which was forwarded by mail to the Christic Institute, Mr. Smith advises his client concerning responses to Plaintiffs' April, 1987 Document Request:

> The enclosed documents are selfexplanatory (sic). Someplace along the line you are going to have to respond or else be subject to Court imposed penalties. I have no idea as to what the Court would do as a result of your noncompliance. I would suggest that if you don't have the requested documents then simply say that you don't. If you need to discuss how to answer some of these "requests", please contact me, and I'll advise accordingly. I suspect that if you provide some reasonable response and an explanation as to why you cannot provide the information requested, the Judge might be satisfied. From his standpoint, he has to maintain the "authority" of the Courts and to completely ignore this request might constitute an afront (sic) to the "dignity of the Court system"....

(Exhibit BB).

96. By his dishonesty, and disrespect for democratic institutions, and this Court, John Hull is not entitled to equitable relief from this Court.

97. In October, 1985, John Hull filed a libel suit in Costa Rica against Plaintiffs alleging, inter alia, that in their La Penca Report (Exhibit I), Plaintiffs had stated that he worked for the CIA and received money from the National Security Council. Hull presented no evidence other than the La Penca Report, called only one witness and refused to take the stand himself. He lost.

98. A little over a year after his defeat in the libel action, Hull admitted in a newspaper interview that he received monthly CIA payments. (Exhibit CC).

99. In a PBS Frontline documentary produced by Charles Stuart entitled "Murder on the Rio San Juan" Hull stated:

> I'm not an assassin... but if it were within my power, people like (U.S. Senators) Kennedy and Kerry would be lined up and shot tomorrow at sunrise.

100. John Hull has also been the subject of a congressional inquiry into a missing loan from the Federal Overseas Private Investment Corporation (OPIC) loan of several hundred thousand dollars. (Exhibit DD).

101. On two occasions, Plaintiffs' counsel warned Mr. Smith, Hull's lawyer that John Hull had been instrumental in intimidating witnesses and investigators from the Christic Institute. Mr. Smith never denied these facts, and never indicated that he had admonished Mr. Hull. (Exhibits EE, FF, GG).

4. Robert Owen

102. Nor is Robert Owen entitled to equitable relief from this Court.

103. As suggested at p. 648 of the Report of the Congressional Committees Investigating the Iran - Contra Affair, Robert Owen, along with Oliver North, improperly used the United States Custom Service to further their defense of this action. Specifically, Owen illegally and improperly obtained tape recordings made by one Joseph Kelso during the course of an official investigation. (Exhibit HH). He obtained these tapes because he had a belief that there might have been some information about the Plaintiffs' case on these tapes. (Exhibit K, p. 39). Robert Owen destroyed these tapes in October, 1986 after the filing of the amended complaint herein. (Id. p. 6.) (See also Exhibit K, pp. 5, 7-9, 25-31, 34, 36-41, 46, 47, 50-52, 61, 63).

104. Owen withheld production of documents until late June 1988, but he failed to produce, and had no reason for failing to produce, one of the most essential documents in the case: a memorandum dated June 11, 1984 to Oliver North, describing his trip to Costa Rica, a trip which coincided with the La Penca bombing.

5. Rafael Quintero, Albert Hakim and Thomas Clines

105. By motion dated August 5, 1987, Defendants Quintero, Clines and Hakim attempted to stay all discovery in this case until criminal proceedings were terminated. Although their motion was denied October 5, 1987 (D. 441), these Defendants successfully blocked all discovery on Fifth Amendment grounds.(D. 634, 1007, 1122).

106. On less than 24 hours notice Quintero moved to quash his deposition noticed for March 30, 1988 on the ground that he intended to take the Fifth Amendment. He did not attend the deposition. After the Court ordered him to appear for his deposition at a later

date, he did so, but invoked the Fifth Amendment as to virtually all questions. (D. 1099).

107. Defendant Hakim took the Fifth Amendment as to all questions asked him at his deposition, including whether or not he was a United States citizen, and walked out after approximately 45 minutes. (D. 978).

108. On March 24, 1988, Defendant Hakim was arraigned in the United States District Court for the District of Columbia (Criminal 88 - 80) on counts including conspiracy and wire fraud in connection with the factual activity attributed to him in this civil case.

6. Richard Secord

109. On March 24, 1988, Defendant Secord was arraigned in the United States District Court for the District of Columbia (Criminal 88 - 80) on counts of conspiracy and wire fraud in connection with the factual activity attributed to him in this civil case.

110. On April 25, 1988, the date of his renoticed deposition Richard Secord invoked the Fifth Amendment in response to many questions and then walked out of his deposition. On May 16, 1988, this Court compelled him to appear for a deposition in Miami on May 16, 1988. The deposition was continued at his request until June 21, 1988 which was after the submission of Plaintiffs' responses to Secord's motion for summary judgment.

111. In an interview with the FBI on July 23, 1986 Defendant Secord disclosed that in May 1986, he had hired Glenn Robinette to investigate the Plaintiffs and myself, and that Robinette could offer the FBI complete background information concerning his investigation. (Exhibit II).

112. A report of an FBI investigation from the Washington Field Office dated July 24, 1986, indicated that David MacMichael, an employee of Christic Institute was

under surveillance. (Exhibit JJ).

113. Further, Richard Secord has destroyed documents related to the subject matter of this case. In November 1986 documents were shredded at the offices of Secord's company, Stanford Technology Trading Group International. Included among the destroyed documents are steno books, telephone logs, and telexes. (Exhibit KK).

114. Mr. Green, Secord's attorney, has himself been the subject of subpoenas in this case because he has possession of documents related to the case which he will not produce. (D. 694, 807, 894, 900). The documents, improperly removed from the Executive Office Building in or about November 1986, by Fawn Hall and others, were placed in a car driven by Mr. Green. (Exhibit LL).

7. Adolfo Calero

115. In October, 1986, Adolfo Calero moved to disqualify Plaintiffs' Counsel because I testified before a Congressional Subcommittee on Western Hemisphere Affairs, at their request. (D. 97). That motion was denied. (D. 140).

116. Moreover, Calero has refused to turn over documents to Plaintiffs' counsel in spite of the fact that the documents had been sought in April, 1987, and were later specifically requested in connection with the defense of this motion. (Exhibit O).

8. Moises Dagoberto Nunez

117. On October 24, 1986, Mario Castro Sanchez, duly appointed by this Court to serve process (D. 2) attempted to serve process on Defendant Nunez. Once Mr Castro Sanchez handed Mr. Nunez the summons, Nunez became hostile, and began to insult Mr. Castro Sanchez, and then blocked the exit so that Castro Sanchez could not leave. Mr. Castro Sanchez was detained in Mr. Nunez' house

for approximately one hour. (Exhibit MM).

9. Mario Dell Amico

118. On August 22, 1987, William J. Davis, S. J., duly appointed by this Court to serve process (D. 7) attempted to serve process on Mario Dell Amico in this action. After refusing to accept service, he informed Father Davis that he intended to have "friends" get his passport stamped to show that he was out of the country on August 22, 1987. (Exhibit NN). Indeed Dell Amico did move to quash service (D. 412), but his motion was denied. (D. 489).

B. Defendants Are Not Entitled to Fees Based on the Bad Faith Exception.

119. With respect to the affidavit of Helen Kenney regarding statements of Richard Ryan (Singlaub Supplement to Motions for Attorneys Fees and for Sanctions, Excessive Costs and/or Attorneys Fees, p. 3, Exhibit C) the Court is respectfully referred to the annexed affidavit of Sheila O'Donnell. (Exhibit P). Richard Ryan, a former short - term employee, was never authorized to engage in the kind of conduct alleged in the Kenny affidavit. Indeed, he was forbidden to go to Florida, was ordered not to seek the location of Mr. Kenny, and was reprimanded for doing so. Mr. Ryan resigned in a meeting in which he was being terminated by Ms. O'Donnell.

120. Singlaub contends that the Witness and Exhibit lists were too large. (Singlaub Supplement, p. 4). It is true that the lists were extensive. The lists were necessitated by the fact that Plaintiffs were unable to engage in discovery for events predating December 1982, which would have permitted culling of the lists as to witnesses having knowledge of events predating 1982.

121. It is ludicrous for Singlaub to contend that

the motives for this case were pecuniary. (Singlaub Supplement, p. 5) Most employees of the Institute, including the Executive Director and General Counsel are paid an annual salary $15,750. Plaintiffs were paid their receipted out of pocket investigative expenses incurred after the filing of the case and were compensated for investigative tasks in accordance with an opinion issued by the D.C. Bar Ethics Committee Chair.

122. Finally Shackley contends that there was no direct information on him. (Shackley Motion, p. 2). This is wrong, as evidenced by the responses to his third Motion for Summary Judgment. Moreover, whatever lack of information exists on Shackley, is directly due to the fact that Shackley disregarded the federal rules governing discovery, and refused to comply with Court orders compelling discovery from him.

V. Defendants Are Not Entitled to Fees Pursuant to Florida Statute 57. 105.

123. As set forth more fully in the accompanying Memorandum of Law, in order to make an award under FSA 57.105, a Court must find a complete absence of a justiciable issue of fact or law raised by the losing party. Based on the foregoing, and in particular on the fact that in January, 1987 this Court denied Defendants' motion to dismiss the complaint, and on October 5, 1987, found that no motions or pleadings submitted up to that date had violated Rule 11, Defendants' claim pursuant to that statue should not be granted.

VI. Defendants Are Not Entitled to Fees Pursuant to Florida Statute 772.104.

124. Defendants have also failed to demonstrate that Plaintiffs raised RICO claims, pursuant to Florida RICO, that were without substantial factual or legal support.

VII. Conclusion.

125. Defendants' claims for fees, costs and sanctions should be denied. Plaintiffs' cross motions for sanctions against John Singlaub and his attorney, Thomas Spencer, and against John Hull and his attorney, Edwin Smith, should be granted.

Dated: Washington, DC
September 12, 1988

_____
DANIEL P. SHEEHAN, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 86-1146-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.
_____/

AND

CIVIL ACTION NO. 87-1545-CIV-KING

Tony AVIRGAN, et al.,
Plaintiffs,

v.

Felipe VIDAL, et al.
Defendants.
_____/

DECLARATION OF PLAINTIFFS' COUNSEL

Plaintiffs' counsel of record hereby declare as follows:

Plaintiff Tony Avirgan and his wife, Plaintiff Martha Honey, are American journalists based in Costa Rica. Plaintiff Avirgan was injured in the bombing of a press conference held by Nicaraguan contra leader Eden Pastora,

at a jungle camp in La Penca, Nicaragua on May 30, 1984. Several people were killed and many wounded. Avirgan also suffered injury in his business as a free-lance television cameraman, employed at the time by ABC Television News. All of Avirgan's equipment was destroyed by the bombing.

On May 29, 1986, Avirgan and Honey filed a lawsuit in the United States District Court for the Southern District of Florida against 29 Defendants. Plaintiffs allege that these Defendants have been members of a federal criminal racketeering enterprise that has engaged in a long-term pattern of racketeering, and that Plaintiffs' damages and injuries resulted from this activity.

The Plaintiffs' claims are made under the Racketeer Influenced and Corrupt Organizations Act, Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. 1961 - 1968 (hereafter "RICO"). Under the civil provisions of RICO, Plaintiffs' counsel, the Christic Institute, is acting as a private attorney general to remedy a serious pattern of criminal violations of a wide range of federal and state criminal racketeering laws--including political assassination, gun-running and drug trafficking--that have been undertaken by "the Enterprise" for some thirty years. The Enterprise's pattern of racketeering activity has been divided into "ventures," comprising several closely interrelated segments, each encompassing a particular time period and geographical region, including: Cuba, Southeast Asia, Iran\Libya, Nicaragua and Iran during a later period.

Thus far in this case, discovery has been restricted at the demand of the Defendants to the period between December 1982 and November 29, 1986, and to specific subject areas.[1]

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[1]The Court has entered an order temporarily restricting Plaintiffs' discovery to the period of December 1982 to November 1986 and to the following subjects:

(1) Central America

This declaration is filed in support of Plaintiffs' motion for leave to file an amended complaint, Plaintiffs' motion to lift the above-described temporary subject matter and time period restrictions on discovery, and Plaintiffs' application for a continuance of the proposed June 29, 1988 trial date.

This court filing serves three purposes: (1) to support Plaintiffs' argument that proper and reasoned discovery must be expanded beyond the four-year time period and narrow subject areas initially imposed by the Court, by demonstrating that the pattern of racketeering activity of the Defendants in furtherance of their Enterprise is wide-ranging in scope, continuous and operative over a thirty-year period; (2) to provide specificity to the allegations set forth in the proposed amended complaint, in the event it is determined that probable cause specificity is required to support Plaintiffs' claims; and (3) to outline the evidence and potential evidence obtained to date in order to demonstrate that members of the Enterprise caused injury to the Plaintiffs through their pattern of racketeering.

Plaintiffs, by and through their counsel, have provided below a history of many, but not all, of the racketeering

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(2) the purchase or sale of military equipment, weapons or explosives supplied or to be supplied to one of the Central American countries or to persons operating in those countries;

(3) transactions in illegal drugs, including the receipt and disposition of income therefrom;

(4) the creation and operation of the Neutrality Act enterprise alleged in the amended complaint;

(5) any actions taken by any of the defendants, including but not limited to the La Penca bombing, resulting in or causing injury to the plaintiffs.

--Order Establishing Limitations and Guidelines for Discovery, July 30, 1987.

activities of the Enterprise as recorded in a variety of public records and sworn testimony. In addition, Plaintiffs' counsel have set forth in this declaration many of the allegations against the Defendants, based on a good faith belief that such allegations are true and could be proven by a preponderance of the evidence if Plaintiffs are allotted broader discovery by the Court, and Defendants are compelled to respond in good faith to Plaintiffs' discovery requests.

As is demonstrated in the motion to lift discovery restrictions, the Defendants have been entirely unforthcoming in response to Plaintiffs' discovery requests. To allow Plaintiffs to obtain compliance with Plaintiffs' discovery demands, and to permit Plaintiffs to undertake discovery outside the temporary limitations imposed by the Court, the June trial date must of necessity be continued.

THE CUBAN VENTURE

The criminal racketeering enterprise consisting of the Defendants and other individuals can be traced to approximately 1959, the time of the revolutionary overthrow of Cuban dictator Fulgencio Batista. It is at this time that the Enterprise began paramilitary operations against Cuba, in violation of the U.S. Neutrality Act, and engaged in political assassinations and other criminal racketeering activities. This venture of the Enterprise was undertaken in conjunction with an already existing criminal operation, composed of an organized crime syndicate and U.S. Government officials, on information and belief acting in their private capacity. The goal of the Cuban venture was the overthrow of Castro's government.

Before the rise to power of the present government in Cuba and the ouster of former President Fulgencio Batista, an interstate and international criminal racketeering syndicate operated in the U.S. and Cuba. This operation, comprising

key American organized crime figures, engaged in murder, narcotics trafficking and gambling, and was headed by Meyer Lansky. Santo Trafficante, Jr., ran its Cuban operations out of Havana.[2] Trafficante forged close ties with Batista, who provided protection for the criminal activities of the organization in return for a percentage of the proceeds from the organization's gambling, narcotics and prostitution enterprises.[3]

On January 1, 1959, Fidel Castro overthrew Batista and forced those in Trafficante's organization, including many Cubans, to flee the country.[4]

Plan to Overthrow Castro is Launched

After the fall of Batista, members of the above-described criminal syndicate began discussions with then-Vice President Richard Nixon, who, on information and belief, was acting in his private capacity on a means to remove Castro from power in Cuba. Trafficante and his criminal syndicate agreed to work with Nixon and several of his associates to develop a foreign military expeditionary force, to be launched from the United States against the people and property of Cuba. This agreement was entered with the full knowledge and

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[2]Henrik Kruger, The Great Heroin Coup (South End Press, 1980), pp. 141-152; M. Gosch and R. Hammer, The Last Testament of Lucky Luciano (Little Brown & Co., 1974), pp. 417-418.

[3]Kruger, supra, pp. 141-142.

[4]Many of these Cubans, trained by Trafficante in the business of organized crime, emigrated to the United States, with at least a quarter of a million moving to Florida, where Trafficante maintained his headquarters. Kruger, supra, p. 142.

understanding that such activity would constitute a criminal violation of the United States Neutrality Act, numerous other federal criminal statutes, as well as state statutes prohibiting murder, arson, assault and kidnapping.

After a meeting with Fidel Castro in Washington in April 1959, Nixon wrote in a memorandum that Castro was "either incredibly naive about Communism or under Communist discipline" and had to be dealt with accordingly.[5] Subsequently, in 1959, a seeret criminal operation was organized to remove Castro from power.[6] To implement this plan, expatriate Cubans were recruited and sent to one of two secret military training bases established for this purpose--one south of Miami, Florida,[7] and the other in Guatemala.[8]. These expatriate forces later became known

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[5]Richard Nixon, Six Crises (paperback ed., 1962), pp. 416-417; William Blum, The CIA: A Forgotten History (Zed Books, Ltd., 1986), p. 216.

[6]Peter Wyden, Bay of Pigs--The Untold Story (Simon and Schuster, 1979), p. 19; Warren Hinckle and William Turner, The Fish is Red--The Story of The Secret War Against Castro (Harper & Row, 1981), pp. 45, 59-60.

[7]Wyden, supra, pp. 45, 142, 143; Hinckle and Turner, supra, p. 20. The Justice and State Departments were pressuring President Eisenhower and Vice President Nixon to move this base out of the country as it constituted a violation of the Neutrality Act. Wyden, supra, p. 45.

[8]The Guatemalan training base was named Camp Trax and was located near Retalhuleu, Guatemala. Hinckle and Turner, supra, p. 66; Wyden, supra, pp. 35,46. Other bases, used generally for more specialized training, were located in Key West and New Orleans, Wyden, supra, pp.

as the 2506 Brigade.[9] Enterprise associate Carl Jenkins was hired to supervise the paramilitary training of the force in Florida, and to recruit others to join the operation.

This criminal operation was designed to allow the expatriate Cubans to re-enter Cuba covertly and establish centers of guerrilla resistance to the Cuban government. Launched from U.S. territory, these forces would mount terrorist attacks against the economic infrastructure of Cuba, thereby disrupting the new government's economy.[10] The operation would later include a plan to assassinate Fidel Castro.[11] The goal of these criminal activities was to terrorize the civilian population of Cuba, and to convince the citizenry that the new government could neither protect them from international acts of violence nor provide an adequate economic base for the nation. Under the plan, the loss of

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85-86, and near Phoenix, Arizona. Hinckle and Turner, supra, p. 65.

[9]Early in the Brigade's history, it was known as the Cuban Brigade. The Brigade's title was changed in honor of Number 2506, the first man to die in training at the Guatemalan base. Wyden, supra, p.51.

[10]House Select Committee on Assassinations, the Final Assassinations Report (Bantam Books, 1979) (hereafter Assassinations Report), pp. 118-119; Wyden, supra, pp. 69, 75-86.

[11]Assassinations Report, supra, p. 122; Hinckle and Turner, supra, p. 20; Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities, Alleged Assassination Plots Involving Foreign Leaders, S. Rep. No. 465, 94th Cong., 1st Sess. (1975) (hereafter Alleged Assassination Plots), p.74.

popular support for Castro would then pave the way for Batista's return to power, and for the re-establishment of Trafficante's racketeering operation in Cuba.

In January and March 1960, Vice President Richard Nixon, on information and belief acting in his private capacity, met with a number of associates to discuss the assassination of Fidel Castro, and the probable effect on Cuba of the disappearances of Fidel Castro, his brother Raul Castro and their associate, Ernesto "Che" Guevara.[12] Such so-called "5412 Committee Meetings" were, on information and belief, a guise for secret meetings between Nixon and his associates to plan this criminal operation. Those involved agreed that if the criminal operation were ever exposed publicly, it would be represented as purely the creation of Santo Trafficante and Fulgencio Batista.

To finance this operation, Richard Nixon and other members of the endeavor, on information and belief, agreed to used the color of their authority as officials of the United States Government corruptly and unlawfully, by diverting funds appropriated by the U.S. Congress for foreign intelligence gathering; commingling such unlawfully diverted funds with the income generated through the criminal activity of Trafficante's organization; and laundering these funds

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[12]Kruger, supra, pp. 143-144, 154; Wyden, supra, p. 24-25; John Ranelagh, The Agency: The Rise and Decline of the CIA (Simon and Schuster, 1987), pp. 337, 356. As early as December 1959, steps were taken to assassinate Castro when CIA Director Allen Dulles, on information and belief acting in his private capacity as an associate of Nixon, approved a memorandum stating that consideration should be given to "the elimination of Fidel Castro." Id. at 345, 790 n. 81; Church Committee, Alleged Assassination Plots Involving Foreign Leaders (W.W. Norton, 1974), p. 92.

through foreign and domestic banks, in violation of the federal banking and currency laws of the United States.

Operation 40: Political Assassination and Terrorism

The secret "low-intensity conflict" forces of Cuban exiles, including the unit supervised by Carl Jenkins, continued their paramilitary training with the goal of overthrowing the Cuban government.[13] During this period, these units began "Operation 40," a program which involved carrying out terrorist acts against the Cuban population launched from the U.S., including murder, arson and kidnapping, all in violation of the U.S. Neutrality Act. This terrorist force had, among its missions, the assassinations of various Cuban leaders,[14] the policing of the Cuban anti-Castro movement to keep it free of more liberal anti-Castro groups, and the eventual establishment of a secret intelligence force within Cuba after the anticipated overthrow of Castro.[15]

Operation 40, in approximately 1960, was supplemented by a political assassination unit, which was formed specifically to locate and murder Fidel Castro, Raul Castro and Che Guevara. This plan was part of a broader scheme to kill foreign leaders known as "Executive Action," with the cryptonym "Z-R Rifle."[16] On information and belief, Richard Nixon, in his private capacity, determined that this political

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[13]Hinckle and Turner, supra, pp. 40, 52.

[14]Hinckle and Turner, supra, p. 76.

[15]New York Times, January 4, 1975, p. 8; Hinckle and Turner, supra, p. 52.

[16]Ranelagh, supra, pp. 357-358; G. Robert Blakey and Richard N. Billings, The Plot to Kill the President, (Time Books, 1981), p.54; Wyden, supra, p. 110.

assassination unit would be recruited from among Trafficante's associates within Operation 40, so that any action on the part of this unit, if revealed, could be attributed to organized crime.

Toward this end, Robert Maheu, an associate of billionaire Howard Hughes,[17] on information and belief met with Nixon and his representatives between May and October of 1960, to discuss the formation of a political assassination unit. Maheu was hired to recruit organized crime members from the United States to carry out the assassinations.[18] In early September 1960, Maheu hired John Roselli, a well-known organized crime figure operating in Las Vegas and Hollywood, to develop the assassination plans. Maheu and Roselli met with Roselli's superior, Sam Giancana, a Chicago organized crime leader, and Santo Trafficante, Jr., both of whom were then enlisted to orchestrate several plans to assassinate Castro.[19] Thus, by September 1960, an assassination capacity was in place that included the joint efforts of Richard Nixon and his associates

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[17]Wyden, supra, p.42; Hinckle and Turner, supra, p.35; Brian Freemantle, CIA (Stein & Day, 1983), p.228; Alleged Assassination Plots, supra, p.75.

[18]Wyden, supra, pp.38-42; Hinckle and Turner, p.34; Brian Freemantle, supra, p.228; Alleged Assassination Plots, supra, pp. 74-75.

[19]Wyden, supra, pp. 42-44; Hinckle and Turner, supra, p. 36-37; Freemantle, supra, p. 229-232; Alleged Assassination Plots, pp. 75-90; P. Lernoux, In Banks We Trust (Anchor Press, 1984), p. 107; Ranelagh, supra, p. 356; Blakey and Billings, supra, pp. 53-54.

and members of the criminal syndicate described above.[20]

Members of the Operation 40 assassination team included Defendants Rafael "Chi Chi" Quintero and Raul Villaverde.[21] Other members of the assassination team were: Luis Posada Carriles (aka Ramon Medina),[22] Felix Rodriguez (aka Max Gomez),[23] Frank Fiorini (aka Frank Sturgis),[24] Ricardo

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[20]Ranelagh, supra, p. 345.

[21]Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigate Covert Arms Transactions with Iran, Joint Hearings (hereafter Iran-Contra Hearings), Testimony of Felix Rodriguez, May 27, 1987, pp. 231-243. Jonathan Marshall, Peter Dale Scott & Jane Hunter, The Iran-Contra Connection (South End Press, 1987), p. 38. Raul Villaverde was also part of the Bay of Pigs assault. Wyden, supra, pp. 192, 222.

[22]Posada, arrested in Venezuela for the terrorist bombing of a Cubana Airlines Flight 455 from Trinidad to Cuba in 1976 that killed all 73 people aboard, escaped from a Venezuelan jail in 1986 and took part in illegally supplying arms to the Nicaraguan contras from Ilopango air base in El Salvador. Hinckle and Turner, supra, pp. 323, 324; Marshall, Scott and Hunter, (hereafter "Marshall"), supra, p. 37.

[23]Rodriguez, a member of the Defendant's Enterprise in many of its ventures, discussed below, became a major player in the illegal contra resupply operation. Marshall, supra, p. 130.

[24]Kruger, supra, p. 145. Frank Fiorini was one of the 1972 Watergate burglars. Ranelagh, supra, p. 389.

Chavez,[25] and Joaquin Sanjenis, who directed Operation 40 for almost ten years, until his death.[26] These Cuban exiles were placed under the supervision of E. Howard Hunt.[27]

The Operation 40 team began training in political assassination in 1960.[28] However, the low-profile, guerrilla-infiltration strategy of Operation 40 was replaced with a plan for a full-scale military invasion of Cuba, to be staged at the Bay of Pigs.[29] The Operation 40 assassination team participated in the invasion, with the intent of establishing a

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[25]Marshall, supra, p. 38. Chavez would become involved in later ventures of the Enterprise, described below.

[26]Hinckle and Turner, supra, pp. 307-308, 310.

[27]Hinckle and Turner, pp. supra, 74-77; Kruger, supra, p.144; Wyden, supra, p. 32. Other members of the Cuban exile community who participated in the attacks on Castro and Cuba include Manuel Artime, Orlando Bosch, Felipe de Diego and Rolando Martinez. Kruger, supra, pp. 144-145.

[28]Hinckle and Turner, supra, pp. 52-55; New York Times, January 4, 1975, p. 8; Charles Ashman, The CIA-Mafia Link (Manor Books, Inc., 1975), pp.91-114.

[29]Hinckle and Turner, supra, p. 308. Defendant Hector Cornillot, another Bay of Pigs veteran, was trained in demolition techniques. Cornillot, later a member of Orlando Bosch's MIRR, a non-governmental anti-Castro group specializing in domestic bombing of businesses in Cuba, was convicted in the bombings of the Mexico Tourist Department, Air France and three businesses in Los Angeles. Marshall, supra, p.45; Hinckle and Turner, supra, pp. 317-318.

small sabotage and assassination unit in Cuba.[30]

JM/WAVE: Shackley and Clines Join the Enterprise

After the failure of the Bay of Pigs invasion in April 1961,[31] the criminal operations against Cuba were resumed, in continued violation of the U.S Neutrality Act.[32] The operations relied primarily on Operation 40 team members,

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[30]Ranelagh, supra, pp. 358-359; Wyden, supra, 75-77; Ashman, supra, p. 112.

[31]The criminal joint venture of Operation 40 trained a special sub-unit of Operation 40, to dress in the uniforms of the Cuban military forces, go ashore into Cuba at the time of the Bay of Pigs invasion and stage a military attack upon the United States naval base at Guantanamo Bay, pretending to be a full-scale attacking force of the Castro Government. This plan was designed to deceive the officials at Guantanamo Bay into believing that they were under attack by Cuban troops so that they would request that the U.S. Marines be called in to defend them in order that President Kennedy, also being deceived, would do so, resulting in direct U.S. military assistance for the Bay of Pigs invasion, which Kennedy was otherwise reluctant to provide. However, the sub-group of Operation 40 secretly assigned to stage the fake Cuban Government attack against Guantanamo Bay utterly failed in its mission, when fearing their plan had been discovered by the Castro Government, never carried out the fake attack. Hinckle and Turner, supra, pp. 80-88.

[32]Assassination Report, supra, p. 120; Hinckle and Turner, supra, p. 110.

who carried out acts of sabotage and assassination.[33] The assassination program, re-established in November 1961, was a secret adjunct to Operation Mongoose, a broad criminal effort to overthrow Castro that was headed by Edward Lansdale. The program of raids and sabotage was operated out of an expanded Miami base called JM/WAVE, which was headquartered on the south campus of the University of Miami, using an electronics firm as a cover.[34] From this base, the paramilitary operations of the assassination team of Operation 40 were again launched against Cuba.[35]

The man who directed Operation Mongoose from the Miami base was 34-year-old Defendant Theodore G. Shackley, who was head of station at JM/WAVE from February 1962 until 1965.[36] Shackley directed approximately 300-400 Americans and 4000-6000 Cuban exile operatives in JM/WAVE operations, which included hundreds of sabotage raids inside Cuba. Shackley also directed, on information and belief in his private capacity, a range of criminal

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[33]Hinckle and Turner, supra, p. 53; Alleged Assassination Plots, supra, pp. 142-146.

[34]Hinckle and Turner, supra, p. 113-118 and Chapter 4, generally; John Prados, Presidents' Secret Wars (Quill, paperback ed., 1986), p. 211. For an extensive discussion of Operation Mongoose, Alleged Assassination Plots, supra, pp. 139-164.

[35]Hinckle and Turner, supra, pp. 110-117; Alleged Assassination Plots, supra, pp 139-140; Thomas Powers, The Man Who Kept the Secrets: Richard Helms and the CIA, (Knopf, 1979), p. 148.

[36]Hinckle and Turner, supra, pp. 114, 135; Kruger, supra, pp. 145-146.

activities, including a series of assassination attempts against Castro.[37]

During this period, Defendant Thomas Clines worked under Defendant Shackley's direction as a case officer for Operation 40.[38] Clines directly supervised many of the Cuban exiles, including Defendant Rafael Quintero.[39] Felix Rodriguez and Defendant Raul Villaverde were also operatives on this project.[40] Another member of the Enterprise, Edwin P. Wilson, worked under Defendant Clines and met Shackley during this time.[41]

JM/WAVE, under the direction of Defendant Shackley, developed numerous infiltration teams that ran sabotage missions into Cuba, contaminating Cuban exports, sabotaging imports into the country, and executing commando raids against Cuban railroads, oil and sugar refineries and factories. JM/WAVE involved daily violations of federal and state laws,

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[37]Kruger, supra, p. 146; Peter Maas, Manhunt, (Random House, 1986), p. 27.

[38]Marshall, supra, p. 29. For details of the assassination and criminal activities of the Miami station, Alleged Assassination Plots, pp. 139-64.

[39]Defendant Quintero was part of the advance team sent into Cuba before the Bay of Pigs invasion. His case officer at that time was Carl Jenkins. After the failed mission, Defendant Clines became Quintero's case officer. Maas, supra, p. 65.

[40]Miami Herald, October 23, 1986; Washington Post, October 24, 1986, cited in Marshall, supra, p. 28; Alleged Assassination Plots, supra, pp. 74-130.

[41]Prados, supra, p. 370.

including the U.S. Neutrality Act.[42]

JM/WAVE also focused on schemes aimed at assassinating Castro[43], devising at least 33 assassination plans.[44] Shackley ratified the ongoing activities of the assassination unit of Operation 40, and incorporated this force into Operation Mongoose. In fact, Defendant Shackley participated in physically delivering arms to members of the assassination unit with full knowledge and intent that the weapons would be used in assassinations. According to a Senate Report, Shackley helped load a truck with rifles, handguns, explosives and radios for John Roselli.[45] Defendant Clines participated in supervising these activities under Defendant Shackley. These assassination operations were beyond the scope of any lawful authorization.[46] In addition, the assassination program renewed contacts with organized crime figures, including Maheu, Giancana and

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[42]Prados, supra, p. 211.

[43]Prados, supra, p. 212; Joan Didion, Miami (Simon and Schuster, 1987), pp. 88-89.

[44]Ranelagh, supra, p. 386. For various assassination attempts on Fidel Castro, Powers, supra, 149-152. Defendant Shackley testified before the Church Committee on May 6, 1976: "'Assassination' was part of the ambience of that time...." Final Report of the U.S. Senate Select Committee to Study Governmental Operations with respect to Intelligence Activities, Book V, p. 14, quoted in Didion, supra, p. 97.

[45]Marshall, supra, p. 35, citing Alleged Assassination Plots, supra, p. 132.

[46]Freemantle, supra, pp. 253-259.

Roselli; and Defendant Shackley maintained a close relationship with Santo Trafficante.[47]

The criminal operation also involved narcotics trafficking; and in 1963 several Mongoose participants were charged with smuggling narcotics from Cuba into the United States.[48] The continued participation of known criminals in this operation and the revelations of drug smuggling were the primary reasons that JM/WAVE was closed down in 1965.[49]

When JM/WAVE was terminated, Shackley and his staff left for Southeast Asia. Subdivisions of the criminal operation remained in Miami, consisting of a highly trained army of approximately 6000 ultra-right wing Cuban exiles, closely allied with organized crime. That association led to the formation of terrorist groups such as Alpha 66 and Omega 7, and the continued illegal trafficking of narcotics.[50]

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[47]Alleged Assassination Plots, supra, pp. 74-130. Ranelagh, supra, p. 383; Kruger, supra, pp. 146. In the summer of 1963 a raid on Cuba took place that was financed by weapons dealer William Pawley. Besides Pawley, the crew consisted of Trafficante associate John Martino and Cuban exiles, including Rolando Martinez. There is evidence that Trafficante and Giancana helped plan the raid. Id., pp. 131, 146.

[48]New York Times, January 4, 1975, p. 8; Marshall, supra, pp. 37, 135-136.

[49]New York Times, January 4, 1975, p. 8.

[50]Kruger, supra, p. 207; Marshall, supra, pp. 125-134.

THE SOUTHEAST ASIAN VENTURE

In 1965, after Operation Mongoose was terminated, Defendants Theodore Shackley and Thomas Clines shifted to Laos, scene of a large covert war that ran from 1960 to 1973. Shackley served, in his official capacity, as the CIA's chief of station in Vientiane to gather foreign intelligence information. On information and belief in his private capacity, Shackley supervised secret criminal operations in Laos until 1969. Clines operated, in his official capacity, under Shackley's direction as the base chief in Long Tieng, in northern Laos.[51] Clines, on information and belief in his private capacity, functioned as Shackley's deputy, supervising the criminal activities of the Enterprise.

The principal activity of Shackley and Clines in Laos was to organize, fund, and direct a secret criminal army composed of Hmong (or Meo) tribesmen. This army, with bases throughout northern Laos, was directed by Shackley and Clines to fight the communist Pathet Lao insurgent forces inside Laos.

The leader of the clandestine army was a Hmong general named Vang Pao, who was also a major opium supplier in Laos.[52] Vang Pao supported General Phoumi Nosavan in the three-way civil war that broke out in 1960 between the Laotian right-wing under General Phoumi, the neutralists under former Prime Minister Souvanna Phouma, and the leftist Pathet Lao. In exchange for his support, Phoumi sent money and arms to Vang Pao. Vang Pao

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[51]Christopher Robbins, The Ravens: The Men Who Flew in America's Secret War in Laos, (Crown Publishers, Inc. 1987), p. 125.

[52]Alfred W. McCoy, The Politics of Heroin in Southeast Asia, (Harper & Row, 1972), pp. 248-249.

was also backed by Shackley and Clines, who provided his army with air support. By 1968, Vang Pao's Hmong army grew to 40,000 soldiers, including 12,000 Thai mercenaries.[53] Vang Pao's officers and agents of Shackley and Clines flew to scattered Hmong villages offering guns, rice, and money in exchange for recruits.

The Enterprise Supports Opium Trafficking

The Hmong tribesmen were historically opium poppy farmers,[54] and with the support of the Enterprise, Vientiane, Laos became the center of the heroin trade.[55] Defendants Shackley, Clines, and Richard Secord, in order to secure support for their paramilitary operations against the Pathet Lao, on information and belief helped Vang Pao gain control of the opium trade in Laos by carrying out a selective program to suppress trafficking by Vang Pao's principal opium competitors. On information and belief, Defendant Secord not only supervised, but personally participated in dropping airborne incendiary

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[53]John Prados, Presidents Secret Wars: CIA and Pentagon Covert Operations from World War II Through Iranscam, (Quill/William Morrow, 1986) pp. 282, 289, 293.

[54]In 1963, the Anthony Poshepny went to Laos as chief advisor to Vang Pao. Prados, supra, p. 272; McCoy, supra, p. 266. Poshepny ignored prospering heroin factories along the Mekong River, and allowed Laotian officers to use U.S.-supplied facilities to manage the drug traffic. Shackley, on information and belief, assigned Edgar "Pop" Buell, to the Plain of Jars, where he helped improve Hmong techniques for planting and cultivation opium. Id., p. 267.

[55]Kruger, supra, p. 146.

devices on the jungle caravans of Vang Pao's opium competitors from short take-off-and-landing aircraft. Secord on information and belief, also oversaw and authorized the transport of raw opium by Vang Pao's tribesmen in paramilitary aircraft from the mountain opium fields of the Hmong tribe to locations where it could be processed into morphine base, later to be processed into "China White" heroin. These operations helped Vang Pao establish monopoly control over the heroin trade in Laos.

Defendant Secord acknowledges that he "was in charge of all the tactical air operations" during the covert operations in Laos.[56] Under Secord's supervision, several hundred aircraft operated out of six bases throughout Thailand and Long Tieng, in northern Laos.[57] After the Corsican mafia's "Air Opium" charter airlines were shut down by Laotian officials in 1965, the planes under Secord's control became the only air transport available in northern Laos. Secord's planes airlifted rice, the Hmong's most important subsistence crop, to Hmong tribesmen, allowing them to increase production of their traditional cash crop--opium.[58] According to several sources, these planes flew opium from mountain villages near the Plain of Jars to Gen. Vang Pao's headquarters in Long Tieng.

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[56]"Playboy Interview: General Richard Secord," Playboy, October, 1987.

[57]David Truong, "Running Drugs and Secret Wars," Covert Action Information Bulletin, Number 28, Summer 1987, p. 4. Under the supervision of Air Force Major Harry C. "Heinie" Aderholt, landing strips for Air America were constructed throughout the Hmong-controlled territory. McCoy, supra, p. 270.

[58]McCoy, supra, p. 283.

Hmong villagers in the area west of the Plain of Jars claim that their 1970 and 1971 opium harvests were bought up by Vang Pao's officers and flown to Long Tieng on Secord-controlled UH-1H helicopters.[59] The U.S. Drug Enforcement Agency (DEA) Far East regional chief was convinced that these planes were used to transport opium.[60]

In 1967, Shackley and Clines, on information and belief, caused Vang Pao to be given financial backing to form his own private airline, Xieng Khouang Air Transport Co., which he used to transport opium and heroin between Long Tieng and Vientiane.[61] Shackley, on information and belief also assisted in providing financial support for the construction of a Pepsi-Cola bottling plant in the Vientiane region, which was used as a front for the purchase of chemicals vital to the processing of heroin. This bottling plant, protected by General Ouane Rattikone, former commander-in-chief of the Laotian army, became one of the most active heroin factories in Laos, with South Vietnamese Air Vice-Marshal Nguyen Cao Ky purchasing large shipments and smuggling it to South Vietnam through the air force.[62]

In 1968, on information and belief, Shackley and Clines arranged a meeting in Saigon between criminal enterprise associates Santo Trafficante, Jr. and Vang Pao, in order to

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[59]McCoy, supra, p. 263.

[60]Jonathan Kwitny, The Crimes of Patriots: A True Tale of Dope, Dirty Money, and the CIA (W.W. Norton & Company, 1987), p. 51.

[61]McCoy, supra, p. 278.

[62]McCoy, supra, pp. 186-87, 248.

set up a heroin smuggling operation from Southeast Asia to the United States. As discussed above, Shackley and Trafficante were close collaborators in Miami, in the Enterprise's low-intensity military operation against the government of Cuba. And Trafficante was in fact in Saigon in 1968.[63] On information and belief, at the meeting in Saigon, Vang Pao agreed to supply opium to Santo Trafficante, who in turn transported the illegal substance to the United States for distribution by associates of the Enterprise. Vang Pao was rewarded with a portion of the profits.

Some of the heroin produced in Laos and, on information and belief, transported by agents of Shackley, Clines and Secord, was eventually sold to American soldiers in Vietnam, resulting in addictions that remained with many of them when they returned home to the United States. Much of the heroin was exported to the U.S. market, contributing to a severe heroin addiction epidemic that spread throughout the society in the late 1960s and 1970s.

In 1970, Vang Pao opened a highly profitable heroin laboratory in Long Tieng, long-time headquarters of both Vang Pao and Shackley's and Clines' operations in northern Laos.[64]

Assassination Programs

In addition to his opium trafficking operation, Vang Pao carried out an assassination program, on information and belief under the auspices of Theodore Shackley and Thomas Clines. Partially funded by Vang Pao's opium income, the program eliminated civilian functionaries and

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[63]McCoy, supra, p. 212.

[64]McCoy, supra, pp. 244, 281.

supporters of the Pathet Lao, as well as Vang Pao's rival opium warlords. On information and belief, Defendant Shackley brought Defendants Rafael "Chi Chi" Quintero and Rafael Villaverde, along with Felix Rodriguez, to Laos, to train members of Vang Pao's Hmong tribe to perform assassinations against Pathet Lao leaders and sympathizers.

Quintero was a trained sniper and explosives specialist for assassinations, who had operated in the Enterprise's Cuban venture and continued in Southeast Asia as well as in the later Enterprise operations.[65] Rodriguez, who had also been involved with Defendants Shackley and Clines in the Enterprise's earlier sabotage and assassination operations against Cuba, was in close contact with Defendant Secord and Donald Gregg, currently national security adviser to Vice President George Bush, in Laos during this period.[66] A CIA officer in Vietnam, speaking to a group of Green Beret officers, claimed that Theodore Shackley "had been responsible for 250 political killings in Laos."[67]

On information and belief, Defendant John Singlaub, in his private capacity, also oversaw political assassination programs in Laos, Cambodia, and Thailand. Singlaub served in his official capacity as Chief of the Military Assistance Command, Vietnam--Studies and Observation Group (MACV-SOG), between May 1966 and August

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[65]Deposition of Milton Gene Wheaton, March 1-3, 7-8, 1988, (hereafter "Wheaton Deposition"), pp. 270-271.

[66]Steven Emerson, Secret Warriors: Inside the Covert Military Operations of the Reagan Era (G.P. Putnam's Sons, 1988), pp. 124-125.

[67]Robbins, supra, p.130.

1968.[68]

Defendant Shackley was transferred to Saigon in 1969, where he served in his official capacity as the CIA's chief of station in South Vietnam until 1972.[69] Clines joined Shackley in Saigon at this time.

Shackley and Clines directed "Operation Phoenix." in Vietnam.[70] The operation was designed to "neutralize"--to assassinate or imprison--non-combatant Vietnamese civilians known or suspected to be collaborating with the National Liberation Front (NLF), the leftist insurgency in South Vietnam. Civilian targets included South Vietnamese town mayors, clerks, teachers, business professionals, and educated persons who contributed to the actual or potential civilian infrastructure of the NLF. Under the Phoenix program, such civilians were assassinated without judicial procedure or even provision of public evidence.

In 1971, CIA Director William Colby told a Senate hearing that Operation Phoenix killed 20,587 Vietnamese suspects and imprisoned another 28,978 between August 1968 and May 1971. The South Vietnamese government itself claimed responsibility for murdering some 41,000

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[68]Prados, supra, p. 248; Eagle Magazine, February 1984.

[69]Frank Snepp, Decent Interval: An Insider's Account of Saigon's Indecent End Told by the CIA's Chief Strategy Analyst in Vietnam (Vintage Books, 1978), pp. 12-13.

[70]Fred Branfman, "South Vietnam's Police and Prison System: The U.S. Connection," Uncloaking the CIA, Howard Frazier, ed. (The Free Press, 1978), p. 112.

Vietnamese during the same period of the program.[71] One former U.S. Phoenix agent testified to Congress that Operation Phoenix became "a sterile depersonalized murder program...It was completely indiscriminate."[72]

Operation Phoenix was declared to be a totally unlawful operation following the 1971 congressional hearings that exposed the program. However, political assassinations in Southeast Asia under the direction of Shackley and Clines continued until 1975.[73]

In 1971, Congress ordered the U.S. military to arrest and prosecute any U.S. citizen conducting assassinations in Vietnam. Following this order, one of the assassins, on information and belief, hired by Shackley, Clines, and the Enterprise, a Mr. Reaux, was arrested and charged with first degree murder by United States authorities in Vietnam.

In 1972, Defendant Shackley left Southeast Asia to become the head of the CIA's Western Hemisphere operations until the fall of 1973.[74] It is during Shackley's tenure in this position that Track II, the criminal operation to engineer a coup against Chile's popularly elected president, Salvador Allende, was conducted. Allende was murdered in September 1973, and a military coup was executed. Shackley, on information and belief acting in his private capacity, had overall responsibility for these

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[71]Victor Marchetti and John D. Marks, The CIA and the Cult of Intelligence (Alfred A. Knopf, 1974), p. 246.

[72]Branfman, supra, p. 114.

[73]Branfman, supra, p. 119, for continuation and acceleration of Phoenix program after 1972.

[74]Robbins, supra, p. 517.

efforts.[75]

Shackley was appointed head of the CIA's East Asian Division in 1973.[76] On information and belief, between September 1973 and April 1975, the Enterprise, led by Shackley and Clines, stole thousands of tons of U.S. weapons, ammunition and explosives from South Vietnam, and unlawfully transported them to Thailand. On information and belief, Daniel C. Arnold and Jerry Barker Daniels, operating on behalf of the Enterprise, hid the stolen military hardware at the Udorn Air Force Base and other locations inside Thailand for later criminal use by the Enterprise.

NUGAN HAND AND AUSTRALIA

Between September 1973 and April 1975, Defendants Shackley, Clines, Secord and Quintero, on information and belief siphoned off a percentage of the funds derived from the opium profits of Vang Pao, that were not required for the Enterprise's assassination operations in Southeast Asia. On information and belief, they transferred this money to a secret bank account at the Nugan Hand Bank located in Sydney, Australia.

Enterprise associate Ed Wilson's former business partner Frank Terpil linked the Defendants and the Enterprise to the Nugan Hand Bank in a 1983 interview:

> The significance of Miami is the drug syndicate. That's the base. Shackley, Clines, the Villaverde

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[75]Kruger, supra, p. 146, 151 n.30, citing T. Branch and G. Crile III, "The Kennedy Vendetta," Harper's, August, 1975.

[76]Robbins, supra, pp. 517-518.

> brothers, Chi Chi Rodriguez--[77]ail the people that I hired to terminate other people, from the Agency, are there. They get involved in the biggest drug scandal going on, which is whitewashed [the "Tic-Toc" scandal in Miami]. Who is the guy behind the scandal? Clines. Who's the boss of Clines? Shackley. Where do they come from? Laos....Where did the money come from? Nugan Hand. The whole goddamned thing has been moved down there....Clines was running drugs.... The pilot of the plane in Asia was Dick Secord, a captain in the Air Force....What was on the plane? Gold! Ten million bucks at a time, in gold. He was going to the Golden Triangle to pay off warlords, the drug lords....Now what do you do with all the opium?...You reinvest it in your own operations....Billions of dollars--not millions--billions of dollars.[78]

Terpil explained that the opium was then sold in Singapore, Hong Kong, and New Delhi. The money from those sales was laundered through banks including Nugan Hand.[79]

The Nugan Hand Bank was founded in Sydney in 1973

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[77]Defendant Rafael "Chi Chi" Quintero, or Felix Rodriguez, or possibly both. Rafael and Defendant Raul are the two Villaverde brothers likely meant here.

[78]Interview with Frank Terpil by journalist Jim Hougan, conducted in 1983, quoted in part in "The Australian Heroin Connection," Covert Action Information Bulletin, Summer 1987: No. 28, p. 8.

[79]Id.

by Australian attorney Francis John Nugan and American Michael Jon Hand.[80] Hand, in his official capacity, was a member of the U.S. Special Forces in Laos under Defendants Shackley and Clines during the Enterprise's Southeast Asian venture,[81] and, on information and belief, Shackley played a major role in the establishment of the Nugan Hand Bank.

A number of investigations have revealed strong ties between Nugan Hand and Defendants Shackley, Clines and Quintero. According to one source, Shackley had a "long, close relationship with the Nugan Hand Bank;"[82] another identifies Shackley as "a Nugan Hand character."[83] An Australian Government investigation report calls Shackley a leading figure who is "relevant to a proper understanding of the activities of the Nugan Hand group."[84] Shackley, Clines and Quintero all transacted unspecified business with Hand and the bank. Clines is known to have deposited millions of dollars in Nugan Hand, on

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[80]In a previous business partnership between the two -- Australian and Pacific Holdings, Ltd.--four of the original shareholders listed a Secord-controlled airline's address as their own, and two other shareholders were otherwise connected to the Enterprise. Lernoux, supra, p. 66.

[81]Commonwealth of Australia-New South Wales Joint Task Force Report on Drug Trafficking, 1983 (hereafter "JTF"), pp. 665-691.

[82]James A. Nathan, "Dateline Australia: America's Foreign Watergate?" Foreign Policy, Winter 1982-1983, p. 183.

[83]Kwitny, supra, p. 97.

[84]JTF, quoted in Kwitny, supra, p. 293;

information and belief acquired in the Enterprise's Southeast Asian venture; and he apparently lost about one million dollars in the bank's collapse.[85]

The Nugan Hand Bank grew throughout the 1970's, and eventually had offices, affiliates or addresses in 13 countries, including the United States, the Cayman Islands, Hong Kong, Taiwan, the Philippines and Thailand. Yet according to Jonathan Kwitny, who has written a book on the bank's activities, "The Nugan Hand Bank never did any banking."[86] It did, however, amass large sums of money over the course of its seven-year existence. The bank collected, moved, and disbursed money, but downplayed legitimate investment operations, seeking instead to profit primarily from illegal and shady dealings.[87] But when investigators started looking seriously into its activities in early 1980, Michael Hand declared that the bank was insolvent.[88]

Nugan Hand attracted depositors by providing such illegal services as shielding income from tax liability, moving it overseas and laundering funds gained from illegal activity. The bank offered unusually high interest rates, and promised its investors absolute safety and secrecy. Bank records reveal that when the bank invested in legitimate instruments like money markets, it made less interest than it regularly paid its clients. An investigation by the Hong Kong liquidator's office concluded that from 1976 to 1980, Nugan Hand lost $7.9 million in trading

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[85]JTF, supra, p. 824.

[86]Kwitny, supra, p. 143.

[87]Kwitny, supra, p. 29.

[88]Kwitny, supra, p. 29.

securities.[89] But for exclusive services such as money laundering, the bank charged unusually high fees--usually 22 percent.[90]

Money From Drug Trafficking

Hand's relationship with Enterprise members during the Vietnam War no doubt acquainted him with many of the region's major opium producers and distributors. As a member of the U.S. Special Forces in his official capacity, from 1964 to 1967, Hand was intimately involved in the Southeast Asian venture of the Enterprise, where he worked with the Hmong army of Enterprise associate Vang Pao, presumably assisting in their training in paramilitary warfare.

Nugan Hand took deposits from and laundered money for many of the largest drug traffickers in Asia and Australia. Many investigators have concluded that the bank actually facilitated drug smuggling operations, by transferring funds within Australia and overseas. The Commonwealth-New South Wales Joint Task Force (JTF) Report concluded that Nugan, Hand and some of their employees were involved in procuring drug money and that "by 1977, Nugan Hand was well established in drug activity."[91] Similarly, the Australian Royal Commission inquiry revealed that the bank regularly moved money from Australia to points in Southeast Asia, to cover the

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[89]Kwitny, supra, p. 165.

[90]Lernoux, supra, p. 74. Australia and most of the other nations in which Nugan Hand operated have strict laws regulating export of funds and exchanging funds into other currencies.

[91]JTF quoted in Kwitny, supra, p. 235.

cost of heroin shipped to Australia and on to the United States and other points.[92] One of the several Australian government inquiries found that the bank was linked to at least 26 separate individuals or groups "known to be associated with drug trafficking."[93] One Australian mobster appears to have used the bank in his dealings with Enterprise associate and organized crime figure Santo Trafficante, Jr.[94] Trafficante likely became involved with Nugan Hand through Shackley, as he had worked closely with Shackley and the Enterprise in Miami, and then in Southeast Asia, where he established a substantial opium network.[95]

The opium-generated profits from the Southeast Asian venture of the Enterprise were, on information and belief, laundered through the Bangkok branch office of the Nugan Hand Bank. The individual responsible for physically carrying the illicit funds for deposit, or "bag-man," for these money transfers, on information and belief was Jerry Barker Daniels. On information and belief, Daniels functioned under the supervision of Daniel C. Arnold, who was operating at the behest of Defendants Shackley and Clines.

After April 1975, the Enterprise, on information and belief established a conduit in Iran, into which a portion of the opium-generated profits from the Southeast Asian venture could be deposited from a branch office of the

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[92]Lernoux, supra, p. 75.

[93] R.T. Naylor, Hot Money and the Politics of Debt (Simon and Schuster, 1987), p. 318.

[94]Lernoux, supra, p. 75.

[95]Kruger, supra, p. 146.

Nugan Hand Bank. The purpose of this Iran-based fund was to finance a new venture of the Enterprise in Iran.

In early 1975, Richard Armitage, working for Enterprise associate Erich von Marbod as civilian attache to the U.S. Department of Defense in South Vietnam, on information and belief established, in his private capacity, this financial conduit in Tehran at the direction of Shackley and Clines. After the fall of Saigon in April, Armitage, still working in his official capacity under von Marbod, became a Defense Department consultant for Vietnamese Refugee Affairs, requiring frequent trips to Bangkok, Thailand. From this post, Armitage, on information and belief acting in his private capacity, maintained contact with fellow members of the Enterprise, specifically Daniel C. Arnold and Jerry Barker Daniels, and, on information and belief, supervised the transfer of the Enterprise's profits both to the Nugan Hand Bank and to the financial conduit he established in Tehran.

In 1977, Nugan Hand opened an office in Chiang Mai, Thailand, a city on the edge of the Golden Triangle whose economy is based on opium. Hand personally selected Australian Neil Evans to represent the bank in Chiang Mai.[96] According to Evans, Nugan Hand and the U.S. Drug Enforcement Administration rented adjoining offices from a Nugan Hand investor and shared a receptionist. The U.S. DEA continues to rent its offices in the same building.[97] During Evans's seven-month tenure as the bank's representative in Chiang Mai, Hand directed him to take in $2.6 million in deposits from six major drug

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[96]Kwitny, supra, pp. 208-209.

[97]Kwitny, supra, p. 215.

dealers.[98] John Owen, who worked out of Nugan Hand's Bangkok office at the same time, confirms, "There was nothing there but drug money. I'm quite sure that's what [Evans] was there for. Mike Hand sent him."[99]

Connections with the Enterprise

A number of Nugan Hand's activities fall outside normal operating procedures for a merchant bank. For example, John Owen's correspondence file contains lengthy reports for the Sydney office, directed to Michael Hand, detailing troop movements and other military and political developments in Cambodia, Laos, Vietnam, and Thailand.[100] The bank's roster of officials and other staff who previously held high positions in the CIA or the U.S. military is extensive.[101]

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[98]Kwitny, supra, p. 213.

[99]Kwitny, supra, p. 216. The Joint Task Force deleted the entire chapter of ten pages on Nugan Hand's activities in Thailand from its report before releasing it to the public. Id., p. 206.

[100]Kwitny, supra, p. 210.

[101]These include: Adm. Earl P. Yates: the bank's president for a time and former chief of staff for Asian and Pacific strategic planning; Gen. LeRoy J. Manor: co-directed the Nugan Hand (N.H.) Manila office, after retiring as chief of staff for U.S. Pacific Command; Gen. Edwin F. Black: president of N.H. Hawaii office; Gen. Erle Cocke, Jr.: ran N.H. Washington office; William Colby: performed legal services for the bank and was CIA director 1973-76; Walter MacDonald: consultant for the bank and was a former deputy director of the CIA (for economic

The bank arranged arms sales with several nations, including Indonesia, Thailand, Malaysia, Brazil, and Ian Smith's regime in Rhodesia.[102] In one instance, Michael Hand, on information and belief operating on behalf of the Enterprise, collaborated with Ed Wilson in supplying forces in Angola with weapons, including a 1976 shipment of approximately 3,000 guns and 10 million rounds of ammunition.[103]

By 1979, Defendants Shackley and Clines were meeting with Hand frequently, on Enterprise-related business. For example, Hand tried to negotiate a deal for "oil-industry parts" on behalf of the Enterprise company American Petroleum Institute Distributors (API), originally set up with the aid of Wilson. Clines served as president of API and Shackley was a consultant;[104] Defendant Quintero and Operation 40 member Ricardo Chavez were also officers of the company.[105] In late 1979, Maurice Bernard (Bernie) Houghton, a drug runner and close adviser to Hand who had many connections with the U.S. intelligence

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research); Guy Pauker: bank consultant and longtime CIA adviser; Dale Holmgren: ran N.H. Taipei branch and worked for CIA proprietary airline Civil Air Transport; Robert Jantzen: hired to run Bangkok office but quit after learning of drug connections and was former Bangkok CIA station chief. Kwitny, supra, pp. 13-14.

[102]Lernoux, supra, p. 72.

[103]New York Times, "North's Aides Linked to Australia Study," March 8, 1987, p. 30.

[104]JTF, supra, p. 736.

[105]Maas, supra, p. 223.

community,[106] met with Defendants Clines and Quintero and Ed Wilson in Geneva to work out a scheme to re-issue $22 million worth of Libyan letters of credit.

Houghton has been described as "the mysterious puppetmaster" behind the Nugan Hand Bank.[107] He functioned as Michael Hand's mentor and apparently recruited key staff members for the bank.[108] One intelligence officer who worked out of the U.S. Embassy in Bangkok, Allan Parks, also remembers Houghton as a civilian drug smuggler who flew C-47 cargo planes between Thailand and Australia during the Vietnam War: "There's no doubt about it, he'd fly anything...The Golden Triangle, that's where he got his opium from."[109] In 1979, Houghton swindled at least $10 million from unsuspecting U.S. employees and armed services personnel in Saudi Arabia, taking in cash in return for worthless certificates.[110] Houghton reportedly used Nugan Hand's short-lived Saudi Arabian branch to finance some of the Enterprise's Middle Eastern arms deals.[111] In 1980, after Nugan's death and the bank's collapse, Defendant Clines helped Houghton flee Australia for the Philippines. Houghton was also likely involved in some way in the military sales to Egypt then being effected by the Enterprise through Clines, Secord, Shackley, von Marbod

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[106]Kwitny, supra, p. 59.

[107]Kwitny, supra, p. 13.

[108]JTF, supra, p. 795.

[109]Kwitny, supra, p. 59.

[110]Kwitny, supra, p. 261.

[111]Lernoux, supra, p. 73.

and Wilson.[112]

The Enterprise Helps Topple Australia's Labor Government

In 1975, Defendant Shackley and the Nugan Hand Bank, on information and belief helped bring about the ouster of Australian Prime Minister Gough Whitlam.[113]

In 1972, Whitlam ushered in Australia's first Labor Party government in over two decades.[114] In 1975, Whitlam's opposition mounted an attack against him based on a scandal involving two of his ministers. Commerce International, a Belgian company with ties to Edwin Wilson, was involved in the scandal.[115] In 1981, Joseph Flynn claimed that under Edwin Wilson's direction, he helped create some of the evidence used to ensnare Whitlam's ministers, and that Michael Hand had paid him.[116]

The opposition parties in Parliament made a major issue of the scandal, threatening to block passage of the government's budget. On November 2, 1975, Whitlam publicly accused the CIA of subsidizing his opposition, and named National Country Party chief Doug Anthony as a

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[112]Kwitny, supra, pp. 334-335.

[113]Kwitny, supra, pp. 97, 135.

[114]Kwitny, supra, p. 131.

[115]Phillip Frazer, "Dirty Tricks Down Under," Mother Jones, February-March 1984, pp. 14-52.

[116]Nathan, supra, p. 177. Wilson was working during this period in his official capacity for Task Force 157. Marshall, supra, p. 39.

collaborator. The next day, the Australian Financial Review reported that the super-secret U.S.-Australian "space study station" in Australia, known as Pine Gap, was actually a CIA electronic intelligence facility. The article also identified Richard Stallings, former director of Pine Gap and friend of Anthony, as a CIA agent. Pine Gap's true function shocked not only the Australian public, but also top government officials, including the Prime Minister. By November 7, 1975, the covers of three more CIA agents had been blown in the press.[117]

In his official capacity, Shackley was CIA deputy director of operations at the time. He was reportedly paranoid about the Labor Party.[118] Shackley responded by sending a "biting and threatening" message to the Director General of the Australian Security Intelligence Organization (ASIO) on November 8, 1975. Shackley's cable was a drastic step that received great speculation in the Australian press.[119] A mere three days after Shackley issued his threats, Whitlam was deposed by Australia's Governor General, in an unprecedented constitutional maneuver. Shackley's actions likely played a major role in Whitlam's downfall.[120]

Nugan Hand's Fall And Subsequent Cover-Up

When Francis Nugan was found, shot dead in an apparent suicide, in January 1980, associates of the Nugan

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[117]Kwitny, supra, pp. 135-136.

[118]Kwitny, supra, p. 131.

[119]Kwitny, supra, p. 136. The text of Shackley's cable is reprinted in Kwitny, supra, pp. 137-138.

[120]Kwitny, supra, p. 140.

Hand Bank and members of the Enterprise proceeded to cover up their activities. Hand immediately rushed back from London and called an emergency meeting of the bank's directors. He then directed a massive document-shredding operation.[121] Many documents were carted off and hidden; Houghton took one travel case full and left it in Edwin Wilson's office in Geneva.

In March 1980, two months after Nugan's death and just prior to the collapse of the Nugan Hand Bank, Ricardo Chavez, acting as a cover for Defendant Clines, bought London Capital Securities.[122] The JTF confirms that Chavez was operating for Clines: "It was a close relationship, particularly between Clines and Quintero ... many of the business partnerships and dealings so far as Quintero and Chavez were concerned were little more than nominee situations for Clines."[123]

Later, probably in April 1980, Clines and Quintero appeared at Wilson's Geneva office and asked to see Houghton's travel case. They eventually looked through the contents and removed a single sheet of typed paper;

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[121]Kwitny, supra, p. 39. Houghton's lawyer, Michael Moloney, told everyone present, "I am fully aware of what has been going on. You all face jail terms of up to 16 years."

[122]An Australian investigation into the Nugan Hand Bank later reported that Chavez held a $325,000 account with the Bank. Kwitny, supra, p. 318.

[123]JTF, supra, p. 827; p. 763. Noting ongoing relationships, the JTF reports, "Since that time [1961] Clines, Quintero, and Chavez have remained close in terms of Agency activity, private business, and social enterprises." Id., p. 664.

Secord's name was discussed and Clines said at one point, "We've got to keep Dick's name out of this."[124]

Numerous ties, some known and others based on information and belief, existed between the Nugan Hand Bank and Defendants Shackley, Secord, Clines and Quintero. The bank was clearly involved in illegal paramilitary operations and drug trafficking, two areas of racketeering activity in which the Enterprise frequently engaged.

IRANIAN/LIBYAN VENTURE

Following the fall of Saigon in April 1975, Theodore Shackley and his associates in the Enterprise shifted their operations to the Middle East. Beginning in 1975 and continuing until the fall of the Shah of Iran in February 1979, the Enterprise worked closely with SAVAK, the Shah's secret police, to assassinate Iranian opponents of the Shah. Between 1975 and 1982, the Enterprise also operated in Libya, often on operations related to those in Iran. Defendants Theodore Shackley, Thomas Clines, Richard Secord and Rafael Quintero were integrally involved in the Enterprise's operations in Iran and Libya. Non-defendants Edwin P. Wilson and Erich von Marbod also played key roles in the Middle East. It is during this time that Shackley and Clines, through the Enterprise, set up an "off-the-shelf" covert operations capacity.

The Enterprise Moves to the Middle East

In 1975, Defendant Shackley was stationed in Washington in his official capacity as CIA associate deputy

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[124]JTF, supra, p. 744.

director in the Directorate of Operations--second in command of clandestine operations. During 1975 and 1976, Defendant Clines was also stationed in Washington, in his official capacity as the head of CIA operations training.[125] Shackley and his associates in the Enterprise relied heavily upon former CIA agent Edwin P. Wilson as their key operative in Iran and Libya. Wilson had close relationships with Defendants Shackley and Clines, dating back to the Enterprise's Cuban venture in the early 1960s. He also had ties to Defendant Secord and to Erich von Marbod.

Wilson had been operating in Iran since 1974, officially as an agent for the super-secret Naval Intelligence Task Force 157 (TF 157).[126] Thomas Clines had arranged for Wilson to move from the CIA to TF 157 in 1971, enabling him to continue operating in his private capacity on behalf of the Enterprise.[127] During this period, from 1971 to 1975, Wilson remained in regular contact with Defendant Shackley.[128]

Wilson had operated "proprietary companies" for the CIA since 1964, and the Enterprise wanted to use similar

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[125]Maas, supra, pp. 7-9.

[126]Sworn Statement of Edwin P. Wilson, December 17-18, 1987 (hereafter "Wilson Statement"), p. 25. Note: The Wilson Statement, which deals with information prior to the timeframe limitations set by the Court, will be provided to Defendants when the Court lifts the restrictions on discovery.

[127]Maas, supra, pp. 48-51.

[128]Kwitny, supra, pp. 97, 101.

proprietaries for its operations.[129] Wilson operated many commercial fronts, including World Marine, Inc. and Maryland Maritime, Inc.[130] He also founded Consultants International, which Wilson claims functioned only as a private business.[131]

Operating in Iran in approximately 1975, Wilson began advising SAVAK, on information and belief at the behest of Shackley and Clines, on using sophisticated radio equipment to locate SAVAK's adversaries. He then relayed these communications to Shackley and Clines.[132] SAVAK was having trouble controlling the Shah's opposition at the time, which was succeeding in assassinating SAVAK agents.

Following the fall of Saigon in 1975, Defendant Secord was promoted to Brigadier General and transferred to

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[129]Wilson Statement, supra, pp. 461-462.

[130]Maas, supra, p. 49.

[131]Maas, supra, p. 32; Wilson Statement, supra, p.8. Washington lobbyist Robert Keith Gray was listed as Consultants International's director. During the 1960s and 1970s, Gray was in charge of the public relations firm Hill and Knowlton's Washington office, and also served as a key advisor on Ronald Reagan's 1980 election campaign. In 1983, after establishing his own firm, Gray and Company, he hired Defendant Owen who stayed on at Gray and Co., taking occasional breaks to travel to Central America to meet with contra leaders and backers,until November 1984. Iran-Contra Hearings, Testimony of Robert W. Owen, May 14, 1987, pp. 325-330 (hereafter "Owen Testimony").

[132]Wilson Statement, supra, p. 24-25.

Iran, to function in his official capacity as chief of the U.S. Air Force's Military Assistance Advisory Group (MAAG).[133] In this position, he represented U.S. defense contractors in selling arms to the Shah.[134] Secord was also responsible for training Iranians in the use of newly acquired military equipment.[135] In addition, he managed all U.S. Air Force programs and some U.S. Army and Navy security assistance efforts in Iran.[136] In September 1975, the Defense Department sent Erich von Marbod to Iran to monitor all U.S. military contracts there.[137]

SAVAK officials soon became aware of Wilson's close connections with Secord and von Marbod, and began pressuring Wilson to procure more equipment and weapons.[138] Wilson regularly informed Secord and von Marbod of his work with SAVAK. He was also regularly debriefed by Defendant Shackley during Wilson's frequent visits to the United States.

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[133]Joint Hearings on the Iran-Contra Investigations, Testimony of Richard V. Secord, May 5-8, 1987, (hereafter "Secord Testimony"), p. 137.

[134]Marshall, Scott, and Hunter, p. 156.

[135]"Playboy Interview: General Richard Secord", Playboy, October, 1987, p. 61.

[136]Marshall, supra, p. 156.

[137]In the final days of the Vietnam war, von Marbod had worked on U.S. military equipment retrieval, and in 1978 he was sent to Tehran to again oversee the U.S. salvage effort. Maas, supra, pp. 53-54, 137.

[138]Wilson Statement, supra, pp. 26,27

Political Assassinations in Iran

Once Secord and von Marbod arrived in Iran, Wilson, at the direction of Shackley and Clines, on information and belief acting in their private capacities, began providing SAVAK with electronic surveillance equipment, used in "search and destroy" operations to track down anti-Shah dissidents. Over time, Wilson learned that SAVAK agents were murdering the Shah's opponents. On one occasion, a SAVAK captain told Wilson that agents had shot to death nine handcuffed and defenseless dissidents after one tried to escape. Wilson relayed all of this information to Shackley, Clines, von Marbod and Secord; the Defendants continued to support Wilson in his efforts to silence Iranian dissidents.[139]

In April 1976, Task Force 157 was disbanded by the new head of Naval Intelligence, Admiral Bobby Ray Inman. Wilson remained in Iran, however, and continued working in his private capacity with SAVAK, at the behest of Shackley, Clines, Secord and von Marbod, who, on information and belief, were working in their private capacities.[140]

During this period, Shackley and his associates in the Enterprise began assisting SAVAK with assassinations. SAVAK provided Wilson with the names of anti-Shah activists, which Wilson passed on to Shackley through Defendant Rafael "Chi Chi" Quintero.[141] The anti-Shah Iranians were then executed by hired assassins or SAVAK

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[139]Wilson Statement, supra, pp. 26-28, 36, 37.

[140]Wilson Statement, supra, p. 39.

[141]Wilson Statement, supra, pp. 46-47.

agents.[142]

In August 1976, Shackley attempted to recruit Defendant Albert Hakim, the Iranian-born head of Stanford Technology Corp. (STC). According to a CIA memorandum: "Shackley's contact [possibly Wilson] indicated that Hakim was anxious to play a pivotal role in the Iranian purchase of American technology and that Hakim let it be known that he had major contacts in Iran with the military and SAVAK."[143]

While in Iran, Secord and von Marbod began to work with Hakim, who was introduced to Secord by Ed Wilson.[144] Shackley had instructed Hakim to contact Secord and von Marbod for help in obtaining contracts with the Iranian government to sell military-security equipment.[145] Hakim's STC maintained several contracts during the 1970s. One of these, worth $5.5 million, supplied Rockwell International's IBEX electronic spying and communica-tions project for the Shah, which Secord oversaw. Secord reportedly helped Hakim win another $7.5 million contract with the Iranian Air Force for a telephone monitoring system; the deal was arranged through bribing Iran's air force commander, Gen. Mohammed Khatemi.[146]

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[142]Wilson Statement, supra, pp. 45-46.

[143]Emerson, supra, pp. 24-25.

[144]Marshall, supra, p. 157; Village Voice, May 19, 1987, p. 30.

[145]Emerson, supra, p. 25.

[146]Marshall, supra, pp. 156-157. Between 1980 and 1983, Shackley served as a consultant to STC. Id.

In August 1976, the three top managers on the IBEX project--William C. Cottrell, Robert R. Krongard, and Donald G. Smith-- were assassinated. Officials blamed Libyan-trained Islamic Marxist guerrillas for the murders.[147] Gene Wheaton, former IBEX Director of Security and a longtime U.S. military criminal investigator and law enforcement officer who has been investi-gating the murders for over ten years, concludes, however, that the officials were killed to cover up a scam for skimming profits from the IBEX project, and that Defendants Secord, Clines, Hakim, Shackley and Quintero were linked to the assassinations.[148]

Wheaton, in his ongoing investigation into the IBEX murders, has discovered that Richard Secord, Thomas Clines, Albert Hakim, and Rafael Quintero have "a historical record of skimming off of military projects, taking kickbacks" and that they have laundered "large amounts of pay-offs...on military programs in the Middle East through Swiss bank accounts."[149] Wheaton testified that the three Rockwell men "were murdered to cover up misdeeds on the project -- a project that there is documentary proof that Albert Hakim was the bag man for -- and that this was part of the Ed Wilson network."[150]

John "I.W." Harper is a member of the Enterprise who

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[147]Washington Post, August 29, 1976; August 30, 1976; January 2, 1977.

[148]Wheaton Deposition, supra, pp. 263-267. The only two individuals accused of the assassinations were killed in shootouts with the Iranian authorities.

[149]Wheaton Deposition, supra, pp. 206, 211.

[150]Wheaton Deposition, supra, p. 266.

served as head of security for the IBEX project between November 1976 and May 1977, when he was replaced by Wheaton.[151] The day before the assassinations, Frank Terpil, who worked for the Enterprise in association with Wilson, was in Tehran.[152] The day after the murders, Terpil flew to Tripoli, Libya, where he met Harper and informed him that the "Rockwell matter" had been taken care of.[153] Earlier, in the summer of 1976, Harper had seen a sand-box training mock-up of the ambush site for the IBEX assassin-ations, at a base where Wilson and Terpil were training Libyans in an Enterprise operation discussed below. Harper later recognized this mock-up as an exact replica of the actual scene of the IBEX assassinations.[154]

Operations in Libya

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[151]Wheaton Deposition, supra, p. 1055. Harper was forced to leave the IBEX position after only six months when it was learned that Washington Post reporter Bob Woodward was preparing to publish a damaging series of articles on Ed Wilson that might link Wilson to Harper. Wilson had hired Harper in 1976 to train Libyans on the use of explosive ordnance, a project arranged by Wilson and Frank Terpil, discussed below.

[152]Wheaton Deposition, supra, p. 1027-1028. From at least 1976 to 1978, Terpil ran a sales company called Intercontinental Technology, which was a subsidiary of Defendant Hakim's Stanford Technology. Maas, supra, pp. 58-65; Wilson Statement, supra, pp. 10, 12-24;

[153]Wheaton Deposition, supra, pp. 264-265, 1026.

[154]Wheaton Deposition, supra, pp. 1026, 1055.

In 1976, Shackley and his associates in the Enterprise directed Wilson to begin operations in Libya. To advance that effort, Wilson contacted Frank Terpil, whom he had met at a 1975 Christmas party and who had business connections in Libya.[155] Wilson arranged a business deal with Terpil to supply time-delay fuses to Libya. Wilson and Terpil sent John Harper, Harper's son Wayne, Douglas Schlachter, and another individual to Libya to train the Libyan military to use these explosives.[156] Wilson continued to brief Shackley, Clines, Secord and von Marbod on these activities. Wilson also passed information on Libya to them through Quintero or Clines; and Wilson was debriefed by Shackley when he returned to the United States.[157]

Between April 1976 and April 1977, Shackley instructed Wilson to locate a suspected terrorist training base in Libya. The site was believed to be a training base for, among others, Iranian dissidents who were secretly transported back to Iran to assassinate SAVAK officers.[158] Toward this end, Wilson entered into an escalating series

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[155]Wilson Statement, supra, pp. 10, 13.

[156]Wilson Statement, supra, pp. 16-18.

[157]Wilson Statement, supra, 19-21. Earlier, Shackley had instructed Wilson to find out to whom, through which arms dealers, and for what price the Vietnamese were selling certain small American arms, especially M-16 rifles. Wilson discovered this information by tracing the M-16 supply route, and he relayed this information to Shackley through Quintero. Wilson Statement, supra, pp. 20, 380-82.

[158]Wilson Statement, supra, pp. 48-50.

of business contracts with Libya. Wilson contracted with Libya to provide mechanics from England to service Libyan C-130 jets, and instructors to train Libyan pilots to fly the aircraft. Shortly thereafter, Wilson arranged to sell CH-47 helicopters to the Libyan government. Both deals permitted Wilson and his agents to fly over Libya at extremely low altitudes, enabling them to locate guerrilla training bases. In late 1977, Wilson hired Lloyd Jones, who had worked under Shackley in Laos and Vietnam, to run the military training operation.[159]

In order to locate the training base more precisely, Wilson provided ex-Green Beret mercenaries to Libya as trainers. The trainers reported the base's exact location to Wilson and he passed this information on to Shackley. The operation at this secret Libyan base included foreign trainees from Africa, Latin America, the Middle East, the Philippines and Europe.[160]

The Libyan government then called on Wilson to build a "clean room" in Libya, to manufacture electronic equipment. The room actually became the final processing point for foreign rebels who were returning to their home countries to wage war.[161] Wilson had an office in the clean room, and he took advantage of his close proximity to the rebels to learn their identities and destinations.[162]

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[159]Wilson Statement, supra, pp. 52, 53.

[160]Wilson Statement, supra, p. 65.

[161]Wilson Statement, supra, p. 69.

[162]Wilson learned that East Germans were manufacturing false passports for these foreigners. Joseph C. Goulden, The Death Merchant, (Simon and Schuster, 1984) p. 157; Wilson Statement, supra, pp. 65-66, 90-94,

Wilson provided Shackley and Clines, via Quintero, with the name, airline and flight number, destination, and type of passport carried by over 100 dissidents as they departed from Libya. Shackley, Clines and Quintero then targeted selected departing rebels for assassination by passing the information on to the secret police forces of various foreign governments, which performed the killings.[163] Wilson stated that Quintero had been known to arrange for assassinations using the Villaverde brothers, Rafael and Defendant Raul, as assassins.[164]

Quintero himself is, on information and belief, a professional assassin who had been recruited by the Enterprise for numerous assassinations, first in Cuba, and then in Southeast Asia and the Middle East. When Wheaton confronted Quintero with a list of 20 people related to Enterprise operations who had died under mysterious circumstances, Quintero denied knowledge of five or six of them, but of the remainder stated that if he were ever granted immunity and compelled to testify about past acts, it would be the biggest scandal ever to hit the

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104, 154, 163-166. Wilson also obtained the specific flight information from Zachariah Atar, a senior member of the Palestinian Liberation Organization (PLO) living in Libya. Wilson Statement, supra, p. 98.

[163]Wilson Statement, supra, pp. 70-72, 94, 95, 104, 160-171.

[164]Wilson Statement, supra, pp. 162, 170, 171. Quintero had also sent the Villaverde brothers to Libya to work under Wilson as explosive ordnance instructors. Wilson Statement, supra, p. 171.

United States.[165]

In 1977, Wilson had suggested to Clines that Clines obtain the position of staff liaison between the CIA and the Defense Intelligence Agency (DIA); "in other words between CIA and Secord."[166] A new intelligence information path developed, whereby Secord informed Clines of which Soviet weaponry the DIA was concerned about in Libya; Clines, in turn, informed Wilson; and Wilson instructed his mercenaries to gather the requested information on the Soviet weapons systems.[167]

In 1978, Wilson employed Alexander Raffio to provide electronic jamming devices to Libyan leader Muammar Qaddafi. Through this arrangement, Wilson gathered intelligence on the Libyan electronics industry, and the Libyan Navy and Air Defense Command, which he continued to pass on to Shackley until his arrest in 1982.[168]

In 1980, Wilson was indicted in the U.S. for selling illegal arms and explosives to Libya. Wilson remained in Libya to avoid prosecution, and continued to pass information concerning assassination targets back to Shackley and his associates in the Enterprise through Quintero. Wilson continued working with Shackley until 1982, when he was arrested by U.S. marshals in the

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[165]Wheaton Deposition, supra, pp. 261-262, 267-273.

[166]Wilson Statement, supra, p. 74.

[167]Wilson Statement, supra, p. 74.; Maas, supra, p. 108.

[168]Wilson Statement, supra, pp. 75-78.

Dominican Republic and sent to prison in the U.S.[169]

The Enterprise Moves Underground

In the mid-1970s, following the Watergate scandal and press reports of illegal CIA activities in the United States and abroad, Congress took action to limit CIA abuses. In 1974, Congress passed the Hughes-Ryan Amendment to the 1961 Foreign Assistance Act, requiring the director of the CIA to brief at least eight separate congressional committees prior to any covert action, other than simple intelligence-gathering.[170] In 1975, both Houses of Congress launched investigations into the CIA. The Church Committee in the Senate and the Pike Committee in the House of Representatives uncovered further evidence of the CIA's history of widespread illegal activity.[171]

Shackley anticipated that President Ford, if re-elected in 1976, would appoint him Director of the CIA.[172] This would allow Shackley to continue "black" operations in his private capacity, avoiding as best he could the new oversight law. In 1975, Shackley, Clines, Secord, von Marbod and Wilson began discussing contingency plans should Jimmy Carter or another reform-minded candidate win the presidency.

In the summer of 1975, Shackley and his associates met at Wilson's residence in Virginia to discuss setting up

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[169]Wilson Statement, supra, p. 75; Maas, supra, pp. 266-268; Goulden, supra, pp. 388-390.

[170]Ranelagh, p. 610.

[171]Ranelagh, supra, p. 587.

[172]Maas, supra, p. 8.

an off-the-shelf, self-financing, covert operations capacity with Shackley, Clines, Secord, Wilson and von Marbod serving as operational officers.[173]

Von Marbod, Secord and Wilson again discussed setting up their "private CIA" as they drove in Secord's armored limousine to a ski resort in northern Iran during the winter of 1976-77. On the trip, they discussed their interest in setting up a cover business to generate personal profit and to continue covert operations without presidential, congressional, or CIA knowledge or approval. Wilson suggested that they set up a proprietary, perhaps a think-tank, that could conduct nation studies for foreign governments.[174]

Shackley and his associates in the Enterprise formally created their private corporation in December 1978, when Shackley, Clines, Secord, von Marbod and Wilson met at a Crystal City, Virginia Holiday Inn. Clines paid for the room with his American Express credit card.[175] The group agreed at this meeting that Ed Wilson would direct his attorney, Edward Coughlin of Geneva, Switzerland, to transfer $500,000 into a special Swiss bank account. These funds were, on information and belief, generated by Wilson through his earlier activities on behalf of the Enterprise, and would be used to capitalize and incorporate International Research and Trade Corporation (IRT). IRT would be the parent company through which the criminal racketeering activities of the Enterprise would

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[173]Wilson Statement, supra, p. 179.

[174]Wilson Statement, supra, pp. 181, 188-189.

[175]Wilson Statement, supra, p. 190.

be conducted after January 1979.[176] IRT had two primary functions: to generate profit and to conduct private covert operations. The ability of members of the Enterprise to carry out criminal covert operations in their private capacities, had been severely curtailed when President Carter and his CIA director Stansfield Turner transferred or fired those with records of such conduct. The Enterprise sought to fill the gap, as a private and independent profit-making venture.[177]

Clines would serve as president of IRT until Shackley retired from the CIA, which he planned to do shortly.[178] As the only publicly identified company official, Clines, who retired from the CIA in October 1978,[179] provided cover for the other partners.[180]

Secord, in 1978, left his post in Iran to become director of military assistance and sales in the Defense Department. In this position, he controlled sales to the entire Middle East, the most lucrative arms market in the world, with such major arms buyers as Israel, Saudi Arabia and Egypt. Secord dealt directly with arms manufacturers, negotiating terms and coordinating delivery. According to

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[176]Wilson Statement, supra, 194-195.

[177]Wilson Statement, supra, p. 201.

[178]Wilson Statement, supra, p. 207.

[179]"Ex-CIA Agent's Associates Run Arms Export Concern", New York Times, September 6, 1981 (hereafter New York Times, September 6, 1981).

[180]Clines held the stock of Shackley, Secord and von Marbod as they continued to serve in government. Wilson Statement, supra, pp. 190-193.

the plan, he was to stay at his government post to assist the Enterprise.[181]

Von Marbod, former senior U.S. defense representative in Iran, was by 1978 the Pentagon's deputy director of the Defense Security Assistance Agency (DSAA)[182], where he was able to determine which companies received Pentagon contracts.[183] He, too, would remain in government, and use his authority to steer lucrative business to IRT--particularly the imminent $4 billion post-Camp David Accords arms contract with Egypt.[184] Wilson also was to use his business contacts to generate business for IRT in Libya.[185]

The five partners met again, in January 1979, at the Key Bridge Marriott hotel in Rosslyn, Virginia.[186] By this time, Wilson's $500,000 seed money was in place.[187] Clines had earlier set up a number of companies with Wilson's help, in addition to IRT, including American

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[181]Wilson Statement, supra, pp. 189, 204-207, 209.

[182]DSAA was established by the Secretary of Defense in 1978 to direct, administer and supervise the execution of security assistance programs, including the foreign military sales (FMS) program to Egypt.

[183]Maas, supra, pp. 54, 137.

[184]Wilson Statement, supra, pp. 189, 192-193, 209.

[185]Wilson Statement, supra, p. 194.

[186]Wilson Statement, supra, p. 232.

[187]Wilson Statement, supra, pp. 219-220. I.R.T. was incorporated in Bermuda in April, 1979. New York Times, supra, September 6, 1981.

Petroleum Institute Distributors (API), established in June of 1978,[188] and Systems Services International (SSI), incorporated in September of 1978.[189] These companies were to be part of IRT's operations, and the five partners of IRT were to hold equal shares in the companies.[190]

Aside from Clines, who served as president for the companies, API's executives included Rafael Quintero, secretary and director; Ricardo Chavez, treasurer and director; and Theodore Shackley as a consultant, a role he served for SSI as well.[191] By September 1979, Shackley had left the CIA.[192]

At this Key Bridge meeting, Shackley, Secord, Clines, von Marbod and Wilson discussed the difficulties of securing an Egyptian arms deal, explored private covert operations possibilities and reconfirmed their intention to carry out racketeering activity through this corporation. Clines reported that he had made an illegal $20,000 payoff to the head of the Mexican national oil company, Petroleanos Mexicanos (PEMEX), to secure an oil contract for API.[193] In addition, the Libyans had asked Wilson for a military study on Egypt, and in the meeting the group decided that IRT would submit a proposal.

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[188]Goulden, supra, pp. 176-177.

[189]New York Times, supra, September 6, 1981.

[190]Wilson Statement, supra, pp. 232, 239.

[191]New York Times, supra, September 6, 1981.

[192]New York Times, supra, September 6, 1981.

[193]Wilson Statement, supra, pp. 232-233. The president of PEMEX, Jorge Diaz Serano, is a former business partner of Vice President George Bush.

Secord and von Marbod drafted a "nation-study" proposal on Egypt and sent it to Wilson in Libya, through his former employee Douglas Schlachter.[194]

Subsequent to this meeting, Wilson received a call from Defendant Clines, who informed him that Secord and von Marbod would be going to London, where Wilson had an office. Clines instructed Wilson to give them $10,000. Wilson personally gave them the money after Secord and von Marbod told him the payment related to their last meeting. Wilson understood this to mean that the payment was for maintaining the off-the-shelf operation.[195]

In the early stages of IRT, the $4 billion Egyptian arms contract that von Marbod, Secord, Shackley, Clines and Wilson had conspired to land for IRT was jeopardized: the Egyptian defense minister demanded that former Egyptian intelligence officer Hussein K. Salem be in charge of the arms shipments.[196] To deal with this impasse, Clines arranged with Salem to set up the Egyptian American Transport & Services Corporation (EATSCO) in August 1979, to handle the arms shipments. Clines, on behalf of the Enterprise, would be a 49 percent partner; Salem would control the remaining 51 percent.[197]

In December 1979, von Marbod approved the exclusive Egyptian arms contract to EATSCO, authorizing a $13.5 million advance payment for shipping costs, which was placed in a Swiss bank. Additional payments to EATSCO

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[194]Wilson Statement, supra, pp. 236-237.

[195]Wilson Statement, supra, pp. 240-244.

[196]Maas, supra, pp. 139-140.

[197]Wilson Statement, supra, p. 224; New York Times, supra, September 6, 1981.

totaled $71 million. Clines was the only Enterprise stockholder identified publicly, but his half of the profits from the Egyptian arms deal continued to be divided among Shackley, Secord, von Marbod, Wilson and himself.[198] EATSCO shipped more than $1 billion worth of arms to Egypt through two Baltimore transport companies: R.G. Hobleman and Air Freight International. The Baltimore companies shipped equipment to Egypt and forwarded the bills to EATSCO, which passed the bills to DSAA. There were 38 shipments from November 1979 to February 1982; 34 of the 38 bills were found to be padded, amounting to $8 million in overcharges.[199]

In 1982, after a two-year investigation, the Justice Department filed embezzlement charges against EATSCO for $8 million worth of overcharges.[200] Clines entered a guilty plea on behalf of SSI, the corporate parent of EATSCO, and the firm agreed to repay the government $100,000, in addition to receiving the maximum fine of $10,000.[201]

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[198]Clines informed his close associate Felix Rodriguez that Secord had a 20-25% share in EATSCO. Joint Hearings on the Iran-Contra Investigations, Testimony of Felix Rodriguez, May 28, 1987, pp. 38-39.

[199]Goulden, supra, pp. 365-366.

[200]"The Secret World of General Secord," Newsweek, May 11, 1987, p. 20 (hereafter Newsweek, May 11, 1987).

[201]Maas, supra, p. 279-280. EATSCO's Egyptian partner, Salem, pleaded guilty to charges of submitting inflated invoices and paid a personal fine of $40,000 and $3.03 million for partial reimbursement of the false claims. Goulden, supra, p. 366.

Glenn A. Robinette, the security officer for the Enterprise, was employed by EATSCO from approximately September 1981 to January 1982. In February 1984, the same month that Clines paid the $100,000 fine, Robinette was instructed by Clines to pick up a check from Defendant Secord. Robinette met with Defendant Secord, who gave Robinette a $33,000 check which he then deposited in Clines's bank account. Apparently, this payment to Clines was intended to cover Secord's share of the fine.[202]

With Shackley, Secord and von Marbod denying any role in EATSCO, Assistant U.S. Attorney Lawrence Barcella had intended to threaten Clines with a jail term, in the hopes that Clines would reveal the three others' interest in the company. Following the fraud disclosure, von Marbod abruptly resigned from the government, while Secord was removed from his post, pending a polygraph test on his connections to EATSCO and Wilson.[203] The polygraph never took place, and current Secretary of Defense Frank C. Carlucci, a former deputy director of the CIA who was then second in command at the Defense Department, re-instated Secord.[204] Shortly thereafter, Secord retired with a full pension.[205]

As Barcella pursued a jail sentence for Clines, the Reagan Administration's expert on terrorism, Michael

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[202]Joint Hearings on the Iran-Contra Investigation, Testimony of Glenn A. Robinette, June 23, 1987, pp. 65-69 and Exhibit 10.

[203]Marshall, supra, p.41.

[204]Maas, supra, p. 247.

[205]Village Voice, supra, May 19, 1987.

Ledeen, intervened and asked Barcella to drop his efforts against Shackley, Secord and von Marbod, explaining that the abuses might have been related to U.S. Government-authorized covert operations. Barcella was then replaced by Theodore Greenberg, assistant U.S. attorney in Alexandria, Virginia, who dropped all but Clines from his probe.[206]

Upon leaving government service, Secord was immediately hired by Stanford Technology, owned by Albert Hakim. The two set up a subsidiary called Stanford Technology Trading Group International, located in Vienna, Virginia.[207] After resigning from his Defense Department post, von Marbod became a consultant for Sears World Trade, a subsidiary of Sears Roebuck, whose chairman at the time was Carlucci.[208] Von Marbod now reportedly works for an aerospace company, LTV Corporation, in Europe.[209]

Secord, Hakim, Clines, Shackley, von Marbod, Quintero and other Enterprise members continued with their secret operations after the EATSCO and Wilson scandals died down. By 1985, Secord, Hakim and Clines were the primary private suppliers of weapons to the contra rebels fighting the government of Nicaragua, with Secord and Clines making frequent trips to Europe and the Middle East to make arms purchases. Quintero, on

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[206]Marshall, supra, p. 41; Maas, supra, pp. 247-248.

[207]Newsweek, supra, May 11, 1987.

[208]Maas, supra, p. 288.

[209]Village Voice, "The Ex-Spy and the Old Boys", February 24, 1987, p. 26 (hereafter Village Voice, February 24, 1987).

Stanford Technology's payroll at $4,000 a month, would receive the weapons in Honduras and oversee their distribution to the contras.[210]

In October 1985, the Enterprise began shipping arms to the Afghan rebels. The Enterprise set up a corporation in Houston, Texas, with three former logistics specialists for Air America.[211] Secord, Hakim and Clines acted as behind-the-scenes operators of the company. The Enterprise bought Soviet-type weapons manufactured in Egypt, along with other weapons from Europe, and delivered them to the Afghan rebels, the Angolan rebels, and other rebel groups, with exorbitant mark-ups. These deals were characterized by fraudulent overbilling and undershipping, with the excess profits diverted to other programs of the Enterprise, including the Nicaraguan contra resupply effort, discussed below.[212]

THE NICARAGUAN VENTURE

The Approach to Somoza

In approximately 1976, Defendants Shackley and Clines sent Enterprise member Ed Wilson to Nicaragua to meet with Anastasio Somoza, then-President of Nicaragua, to discuss the provision of military aid by the Enterprise to his regime.[213] Wilson was accompanied on this trip by Dr.

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[210]Wheaton Deposition, supra, p. 125.

[211]Wheaton Deposition, supra, pp. 202, 203.

[212]Wheaton Deposition, supra, pp. 200-202, 250-252.

[213]Sworn Statement of Edwin P. Wilson, December 17-18, 1987 (hereafter "Wilson Statement"),attached as an exhibit to this submission, pp. 109-115, 442-454.

Manuel Artime.[214] Clines had previously introduced Wilson to Artime, a Bay of Pigs veteran who had a contract with Nicaragua to handle their meat exports.[215] The contract between Artime and Nicaragua was merely a ruse to pay Artime for organizing a force of approximately 100 Cubans to protect Somoza in the event of an uprising or revolt.[216] Artime's operation was clearly known by Clines, if not devised by him.[217] During this visit, Wilson discussed with Somoza the supply of military equipment and supplies to Nicaragua by the Enterprise and was later debriefed by Clines.[218]

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[214]Artime was a close friend of E. Howard Hunt. Besides being an organizer of the "Cuban Defense Fund" which had been used to funnel secret hush money payments to the Watergate burglars, Artime also served as a key assassination conspirator in the plot to kill Fidel Castro. Bernard Fensterwald, Jr., Assassination of JFK: Coincidence or Conspiracy, (Zebra Books, 1977), p. 513. Artime later became the mentor for drug money launderer Ramon Milian Rodriguez. Leslie Cockburn, Out of Control (Atlantic Monthly Press, 1987) (hereafter "Cockburn"), p. 154.

[215]Wilson Statement, supra, pp. 443-444.

[216]Wilson Statement, supra, p. 109. Artime had already helped the CIA covertly deliver $30-40 million to Somoza in the mid-1970's with the assistance of his accountant, Ramon Milian-Rodriguez. Cockburn, supra, p. 154.

[217]Wilson Statement, supra, p. 447.

[218]Wilson Statement, supra, pp. 453-454.

After President Carter took office in January 1977, Clines asked Wilson to meet with Somoza again and to draft a proposal to present to the Nicaraguan dictator.[219] Clines was concerned that President Carter would refuse assistance to Somoza, who "was going to go down the drain."[220]

Shortly after API Distributors was formed in June of 1978, Wilson, representing the Enterprise through API and Defendants Clines, Shackley and Quintero, met with Somoza again in Miami and made a proposal for the provision of a private covert operations capacity.[221] The proposal was drafted by Wilson, after he had consulted with Clines.[222] Clines informed Wilson's former employee, Douglas Schlacter, that the project involved providing Somoza with a personnel protection system, and that a private company would be established to handle the project.[223]

At the Miami meeting with Somoza, Wilson proposed that the Enterprise provide "secure intelligence nets, the use of psychological warfare, and an excellent counter-intelligence force." As part of the deal, the Enterprise would provide five "advisors," one of whom was likely to be Defendant Quintero, to conduct field training and

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[219]Wilson Statement, supra, p. 457.

[220]Wilson Statement, supra, pp. 108-111.

[221]Wilson Statement, supra, p. 130.

[222]Wilson Statement, supra, p. 134.

[223]Wilson Statement, supra, Exhibit B (Statement of Douglas Schlacter to the FBI on December 11 and 29, 1981).

manage the government's counter-insurgency effort. The intelligence network would provide the necessary information for Somoza's forces to carry out "search and destroy" missions, including assassinations[224] against the rebel forces of the Frente Sandinista de Liberacion (FSLN) and other Somoza opponents.[225] This "search and destroy" capacity would be essentially identical to the assassination operation provided by the Enterprise for SAVAK in Iran.[226] In addition to the written proposal, Wilson orally offered to provide arms and ammunition to Somoza as well.[227] Somoza objected to the proposal's cost of $650,000 a year and declined the offer at that time.[228]

Early in 1979, Wilson again approached Somoza at the direction of the Enterprise. Since the Carter administration had cut off all official U.S. military assistance to Nicaragua,[229] Wilson once again offered the

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[224]Wilson Statement, supra, pp. 141-142.

[225]Wilson Statement, supra, pp. 119-125 and 135-147.

[226]Wilson Statement, supra, pp. 135-138 and 142.

[227]Wilson Statement, supra, p. 131.

[228]Manhunt, supra, pp. 138, 231; Wilson Statement, supra, p. 133 and Exhibit B.

[229]In February, 1979, the U.S. State Department announced that the United States was recalling more than half of its officials from Nicaragua and suspending all new economic and military aid to that country. Report of the Congressional Committees Investigation the Iran-Contra Affair with Supplemental, Minority, and Additional Views, S.Rep. 100-216, H.Rep. 100-433, November 1987 (hereafter "Iran-Contra Congressional Report"), p. 27.

Enterprise's services in obtaining arms, ammunition and other military equipment.[230] Meanwhile, Clines and other members of the Enterprise, were attempting to cut Wilson out of the operation. Somoza, while stalling on Wilson's offer and without Wilson's knowledge, arranged arms deals with Clines, Shackley and Quintero.[231] Beginning in approximately March of 1979, the Enterprise agreed to provide Somoza with a private supply network of military equipment and an "intelligence and assassination" program.

From approximately March of 1979 to July of 1979, Defendant Rafael (Chi Chi) Quintero acted as the "supply officer" for arms and munitions being shipped to the regime of Somoza. The weapons were supplied by Defendants Shackley, Secord, Clines and Hakim through the Enterprise.

Following his ouster from Nicaragua in July 1979, Somoza met several times in the Bahamas with Defendant Quintero, in the latter's capacity as a representative of the Enterprise. They agreed that Defendants Shackley and Clines and others involved in the Enterprise's provision of military hardware would continue to sell arms to Somoza and his followers, in their new incarnation as "the contras," to be used in an effort to overthrow the new government of Nicaragua. Quintero was to be the executive officer for this operation.[232] Arrangements were apparently made to continue the supply of arms. Until June 1981, when the U.S. government officially, though covertly, took it over, this secret supply operation of the Enterprise

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[230]Wilson Statement, supra, 149-150.

[231]Wilson Statement, supra, pp. 148-149, 457-459.

[232]Cockburn, supra, p. 106.

continued under the supervision of Defendant Quintero.[233]

Singlaub and the World Anti-Communist League (WACL)

On November 22, 1981, Defendant John K. Singlaub convened a meeting to create the United States Council for World Freedom (USCWF), the U.S. chapter of the World Anti-Communist League (WACL).[234] WACL was originally created by the intelligence organizations of Taiwan and South Korea to provide a vehicle for anti-Communist propaganda. Since its formation, WACL has had a strong Nazi component, with at least three European chapters controlled by former Nazi SS officers.[235] By 1980, a new, more action-oriented and dangerous League began to appear, and Central America was the focus. At a 1980 League conclave, an agreement was made in which Argentine counter-terrorists and torture specialists would be sent to El Salvador to assist in the anti-communist struggle there.[236]

Within two months, Roberto D'Aubuisson of El Salvador,[237] with the assistance of Mario Sandoval Alarcon,

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[233]Wheaton Deposition, supra, pp. 538-539.

[234]Anderson and Anderson, supra, p. 150.

[235]Peter Dale Scott, Jonathan Marshall and Jane Hunter, The Iran Contra Connection: Secret Teams and Covert Operations in the Reagan Era (South End Press, 1987) (hereafter "Scott, Marshall and Hunter"), pp. 20-21.

[236]Anderson and Anderson, supra, pp. 119-21.

[237]D'Aubuisson was implicated in the murder of Archbishop Oscar Romero in El Salvador. Christopher

the death squad "godfather" of Guatemala, had been provided with at least 50 Argentine unconventional-warfare advisors to help D'Aubuisson's squads perfect their "counterterror tactics."[238] By 1980, the remnants of Somoza's National Guard had made their way to Guatemala after their defeat. While there, the fledgling contras received the important support of Sandoval Alarcon, Defendant Singlaub's WACL associate, which kept them alive.

Defendant Singlaub had been asked to form the U.S. chapter while attending the 1981 WACL conference as an observer.[239] With a loan of $20,000 from Taiwan, USCWF was formed for the purpose of providing "support and assistance to the democratic, anti-communist Freedom Fighters of the world."[240] USCWF reached out to people with past involvement in national security and foreign policy issues, as well as heads of conservative political and academic organizations.[241] Singlaub was an advocate of unconventional warfare, which he defined as "low intensity actions, such as sabotage, terrorism, assassination and guerrilla warfare," which would further change the function

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Dickey, With the Contras (Simon & Schuster, 1987) (hereafter "Dickey"), supra, pp. 86-7; Scott, Marshall and Hunter, supra, p. 20.

[238]Anderson and Anderson, supra, pp. 147-8.

[239]Anderson and Anderson, supra, pp. 151-152.

[240]Anderson and Anderson, supra, p. 152; Letter from Singlaub to Rev. Don White, Gospel Advance Mission, dated February 13, 1985.

[241]Anderson and Anderson supra, p. 152.

of WACL.[242]

Even before the creation of USCWF, Singlaub was already involved in Central America. In December 1979 he and retired General Daniel Graham headed a delegation from the American Security Council, a private right-wing organization,[243] on a trip to Guatemala.[244] While there, the delegation relayed the message that "'Mr. Reagan recognizes that a good deal of dirty work has to be done.'"[245] Death squad activity in Guatemala increased dramatically following their trip.[246]

Defendant Singlaub was accompanied on his second trip to Guatemala by General Gordon Sumner of the Council for Inter-American Security in 1980. In the 1979-80 period, Sumner had been in Washington, D.C., looking for ways for groups fighting the new government of Nicaragua to get started.[247] The message he and Singlaub carried to Guatemala on this trip was that "'help was on the way in the form of Ronald Reagan,'" who was campaigning for the Presidency of the United States.[248] Another purpose of these trips was to "forge an alliance between the Reagan campaign and the local backers of

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[242]Anderson and Anderson, supra, p. 120.

[243]Anderson and Anderson, supra, p. 157.

[244]Anderson and Anderson, supra, p. 174.

[245]Anderson and Anderson, supra, p. 175.

[246]Anderson and Anderson, supra, p. 175.

[247]Scott, Marshall and Hunter supra, p 63.

[248]Scott, Marshall and Hunter, supra, p. 54.

what would later become the contra army."[249] Upon his return to the U.S. in 1979, Singlaub called for "'sympathetic understanding of the death squads.'"[250] After the visits of Singlaub and others, the right wing in Guatemala began raising campaign funds for Ronald Reagan, "perhaps as much as 10 million dollars." The money was passed indirectly to his campaign through Michael Deaver and an undisclosed campaign committee in California, who had been hired as the Guatemalans' Washington lobbyists.[251] One of the results of this money was that Guatemala's Sandoval was invited to dance at Ronald Reagan's 1980 inaugural ball.[252] By 1982, Singlaub was providing former U.S. military personnel to El Salvador to train the army there in counter-insurgency tactics.[253] Singlaub described his purpose as using private citizens to avoid the 55-military-advisor limit set by

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[249]Scott, Marshall and Hunter, supra 30.

[250]Scott, Marshall and Hunter, supra 54. In 1984, Defendant Singlaub responded to criticism of the violent activities of some of the Latin American WACL chapters by removing the Mexican group, the Tecos. But other equally extremist groups such as the Bolivians, Guatemalans and the Brazilians, remained. Anderson and Anderson, supra, p. 148.

[251]Scott, Marshall and Hunter, supra, 52-53.

[252]Anderson and Anderson, supra, p. 177.

[253]Singlaub Congressional Testimony, supra, p. 184.

Congress for El Salvador.[254]

In 1982, the USCWF was granted tax-exempt status by the IRS after then-treasurer Albert Koen, then its treasurer, agreed that "'at no time will the USCWF ever contemplate providing materiel or funds to any revolutionary, counterrevolutionary or liberation movement.'"[255] From the beginning, Defendant Singlaub ignored this restriction. In 1984, as he was about to take over the chairmanship of WACL, he stated:

> I am convinced that our struggle with Communism is not a spectator sport. As a result of that view, we have opted for the court of action which calls for the provision of support and assistance to those who are actively resisting the Soviet supported intrusion into Africa, Asia and North America.
>
> The geographic regions of WACL must not only provide support to the freedom fighters who are engaged in combat in their own region, but they must develop plans of action to support the resistance in other regions of the world.[256]

Each chapter's effectiveness would be measured by how well the "plans of action" were carried out.[257]

The Buckley Kidnapping

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[254]Deposition of John K. Singlaub, March 7-8, 1988 (hereafter "Singlaub Deposition"), pp. 252-3.

[255]Anderson and Anderson, supra, p. 269.

[256]Anderson and Anderson, supra, p. 257.

[257]Anderson and Anderson, supra, p. 258.

On March 16, 1984, William Buckley, the CIA station chief in Beruit, was kidnapped. Buckley was a former associate of Defendant Shackley in Vietnam. In 1978, he worked with Edwin Wilson and Glenn Robinette training Egyptian President Anwar Sadat's bodyguards. He was also an associate of Defendant Quintero's at Mexico's Pemex Corporation in the early 1980s. Oliver North, the director of the anti-terrorism unit at the NSC, responded to the kidnapping by drafting National Security Decision Directive 138. It proposed "CIA-backed and trained teams of foreign nationals to 'neutralize' terrorists known to have struck American or known to be planning such attacks." CIA General Counsel Stanley Sporkin provided a dubious legal opinion stating that the prohibition in Executive Order 12333 against "political" assassinations would not be violated by the new directive. Because of objections from some CIA officials, President Reagan signed a revised NSDD that authorized the creation of a new counterterrorism task force.[258] Using that authorization, North established the Terrorist Incident Working Group (TIWG), an anti-terrorist group that would function outside of the control of the government agencies. According to persons in the Pentagon, Defendant Secord, who was an NSC consultant, headed this group, which was responsible for planning the rescue of hostages held in the Middle East, as well as "neutralizing" terrorist threats from Iran, Libya and Nicaragua.[259]

It is believed that it is from this group that Defendant Secord coordinated the Enterprise's "anti-terrorist" activities with -- among others -- North, persons at the

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[258]Woodward, Veil, supra, pp. 361-2.

[259]Washington Post, February 17, 1987; Miami Herald, March 8, 1987; Cockburn, supra, p. 195.

FBI, and Defendant Shackley. It is also believed that it was under this rubric of "anti-terrorism" that the Enterprise conducted its secret operations against the government of Nicaragua and Eden Pastora, whom it viewed as a communist ally of Nicaragua.

The "Ikle" Panel

In approximately March of 1984, it became clear that Congress was going to bar government agencies from providing any military or paramilitary assistance to the contras. Andrew Messing, an Enterprise associate and the director of the National Defense Council, and Defendant Singlaub contacted Fred Ikle, the under-secretary of Defense, and suggested that Ikle consult a number of private covert operations specialists to discuss the generic problem of "the Communist threat throughout Central America," and a multi-dimensional approach to conflict which included a military, political and economic response. Ikle already had a relationship with Singlaub because of reports Singlaub provided on his trips to Central America and was implementing Singlaub's suggestions before the panel was convened.[260]

In May of 1984, based upon Messing's and Singlaub's recommendations, the panel was convened. Singlaub was the chairman and other members were: Singlaub, Andrew Messing, then of the Conservative Caucus, Defendant Shackley, Harry (Heinie) Aderholt, Edward Luttwak, retired General Edward Lansdale, Seal Doss and Col. John Waghelstein, former head of U.S. military group in El

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[260]Deposition of Andrew Messing, December 30, 1987 (hereafter "Messing Deposition"), pp. 33-40 and 63; Deposition of John K. Singlaub (hereafter "Singlaub Deposition"), p. 35.

Salvador.[261]

At these meetings, the privatization of the war against Nicaragua was discussed. It is believed that the panel drafted a seven-page report -- which is not classified -- on the steps which should be taken to enable private paramilitary groups to take over operations in Central America.

Formal U.S. Support for the Contras

On March 9, 1981, on the recommendation of CIA Director William Casey, President Ronald Reagan issued a formal presidential finding authorizing covert CIA activities against the Nicaraguan government.[262] In June of 1981, Casey assigned Vincent M. Cannistraro to supervise the CIA operation to supply funds and military equipment to the contras.

To conceal his involvement in the efforts against the government of Nicaragua, Casey -- as had WACL -- turned to the Argentines. On November 1, 1981, Director Casey met in Washington with General Leopoldo F. Galtieri, the chief of staff of Argentina's army who would later become its president. Galtieri agreed to allow Argentina to train and direct the Nicaraguan rebels, known as contras, if the U.S. would provide money, weapons and other military equipment.[263]

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[261]Deposition of Andrew Messing, December 30, 1987 (hereafter "Messing Deposition"), p. 5.

[262]Washington Post, May 8, 1983; "Reagan Advisers Ran 'Secret Government,'" Miami Herald, July 5, 1987.

[263]Scott, Marshall and Hunter, supra, p. 11. Edgar Chamorro stated in his affidavit dated September 5, 1985, and submitted to the World Court, that General Vernon

On November 16, 1981, at a meeting of the National Security Council, the CIA recommended a covert paramilitary operation against what was described as "the Cuban-Sandinista infrastructure in Nicaragua and elsewhere in Central America." The operation was to employ a force of 500 exiles, ostensibly to interdict alleged Nicaraguan government arms shipments to guerrillas in El Salvador, but was essentially a covert operation to harass the Nicaraguan government.[264] On November 23, 1981, President Reagan signed National Security Decision Directive (NSDD) 17, which provided the necessary funds for the contras. It authorized $19.95 million for the CIA to "work with foreign governments as appropriate" to build a paramilitary force against the Nicaraguan government.[265] The money went to the Argentinians.

NSDD 17 was not provided to Congress. On December 1, 1981, CIA Director Casey fraudulently presented a second NSDD to the Congressional intelligence committees stating that the operation was strictly limited to attacks against the Cuban presence and the Cuban-Nicaraguan support infrastructure such as military installations and bridges, and that civilian casualties would be avoided.[266] In practice, however, contra

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Walters arranged for the Argentinian military advisors.

[264]Washington Post, March 10, 1982. Steven Emerson, Secret Warriors: Inside the Covert Military Operations of the Reagan Era (G.P. Putnam's Sons, 1988) (hereafter "Emerson"), p. 121.

[265]Washington Post, May 8, 1983.

[266]Peter Kornbluh, Nicaragua: The Price of Intervention, (Institute for Policy Studies, 1987) (hereafter

operations, both by design and with reckless disregard, resulted in high levels of non-combatant civilian casualties in violation of Common Article 3 of the Geneva Conventions.[267]

Casey's operations in alliance with the Argentinian Army continued until December of 1982 when U.S. support for the United Kingdom during the Falkland Islands conflict caused Galtieri to withdraw his military advisers.[268] During that time, the main contra force, the September 15th Legion headed by former Somoza National Guard Colonel Enrique Bermudez, was recognized by the U.S. government as "a terrorist group."[269] But in August of 1981, associates of William

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"Kornbluh"), p. 23. This finding was later modified, in September of 1983, to adopt a new and broader rationale for contra aid: "covert aid was intended to pressure the Sandinistas [Nicaraguan government] to negotiate a treaty with nearby countries." Iran-Contra Congressional Report, supra, p. 35.

[267]Kornbluh, supra, p. 39-41, citing former CIA Director Stansfield Turner's testimony before Congress; Miami Herald, October 20, 1984, quoting CIA official Duane (Dewey) Clarridge.

[268]Kornbluh, supra, p. 32; Washington Post, Dec. 18, 1982.

[269]U.S. Department of Defense Weekly Intelligence Summary (WISUM), July 14, 1982. One Nicaraguan, Pedro Diaz, swore out an affidavit to the Honduran Army on August 20, 1982, against the contra leader, Ricardo Lau Castillo, charging that he sent out his men to commit robberies and assaults and ordered some of them killed so

Casey organized this terrorist group of mostly former National Guardsmen into a counter-revolutionary army which was labelled the Nicaraguan Democratic Front (FDN). A year later, for public relations purposes, a civilian directorate of FDN was formed. Defendant Adolfo Calero was named chief political representative, with Col. Enrique Bermudez heading the military operations.[270]

By 1982, the National Security Council (NSC) was already taking an operational role. In early 1982, Felix Rodriguez, a former CIA officer and associate of the Enterprise, developed a five-page proposal for an elite mobile strike unit called a Tactical Task Force to attack Nicaraguan targets. In March of 1983, Rodriguez met with Donald Gregg, a former CIA and NSC officer who is now Vice President Bush's national security advisor, and Richard Stone, the administration's Central American negotiator, to discuss the alleged threat of Nicaraguan-based rebels in Central America. Rodriguez left his plan with Gregg and Stone. Gregg forwarded it to Robert McFarlane, then deputy NSC adviser, who provided it to

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that he could keep the money himself during their regrouping period in Guatemala. Lau, who was known as Somoza's "hatchet man" and torturer, has been implicated along with d'Aubuisson in the murder of Salvadoran Archbishop Oscar Romero. Dickey, supra, pp. 82-3 and 88 and notes.

[270]Tom Barry and Deb Preusch, The Central American Factbook, (Grove Press, Inc., 1986) (hereafter "Barry and Preusch"), pp. 277-278. A 1985 study by the Arms Control and Foreign Policy Caucus of the U.S. Senate revealed that 46 of the FDN's 48 military leaders had been members of Somoza's National Guard. Id.

his aide, Lt. Col. Oliver North. It was then approved by National Security Adviser William Clark, and Rodriguez went to El Salvador to attempt to implement it.[271]

Israel also participated in the covert operations against Nicaragua, essentially acting as a cut-out for the Casey operation. By the end of 1983, Israeli military advisers were training contra forces to launch attacks against the government of Nicaragua. Beginning in 1982, they were supplying military equipment to the contras.[272]

Beginning of the Southern Front

In June of 1981, Eden Pastora, a former Sandinista commandante and member of the Nicaraguan government, left Nicaragua for Panama to attempt to persuade President Omar Torrijos, along with Fidel Castro, to exert political influence over the Sandinistas. At the time of Torrijos' death in late 1981, Pastora was in Cuba discussing his initiative with Castro. The unexpected death of Torrijos ended Pastora's plan, and he left for Costa Rica, where he had his first meetings with the CIA.[273] In early 1982, after meetings in Mexico which included Duane Clarridge, then CIA Latin American Director and later the head of the CIA's counterterrorism unit,[274] Pastora and

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[271]Emerson, supra, pp. 125-8

[272]Emerson, supra, pp. 122-123.

[273]Deposition of Carol Hernandez Prado, May 5, 1987 (hereafter "Prado Deposition"), pp. 21-2. Prado was Pastora's chief deputy until 1986.

[274]Deposition of Eden Pastora, May 6, 1987 (hereafter "Pastora Deposition,"), p. 6; The National Security Archive, The Chronology: The Documented Day-by-Day Account of the Secret Military Assistance to Iran and the Contras

the CIA agreed to work together against the Nicaraguan government with the CIA providing economic and military aid. The CIA provided Pastora with $150,000 a month without a change in the Presidential Finding.[275] In April 1982, Pastora announced his break from the Sandinistas.[276] In September 1982, he and Alfonso Robelo, a millionaire agri-businessman from Nicaragua, formed the Democratic Revolutionary Alliance (ARDE).[277]

On December 21, 1982, Congress passed the first Boland Amendment to the Defense Appropriations Act which barred the use of any funds appropriated in that bill, which included CIA funding, for the purpose of overthrowing or destablizing the government of Nicaragua.[278] In defiance of this directive by Congress, Casey, however, continued to supply the contras with arms and ammunition until the summer of 1984.[279]

(hereafter "The Chronology"), p. xiii.

[275]Pastora Deposition, supra, p. 10. Defendant Jones testified that in 1982, he was told by Popo Chamorro, one of Pastora's commanders, that they were being supplied by the CIA, and that his activities were agency-supported. Jones Deposition, supra, pp.34-6. Jones believed Pastora had approximately 5,000 troops at his peak. Id., p. 87.

[276]Prado Deposition, supra, p. 22.

[277]Iran-Contra Congressional Report, supra, p. 32; Kornbluh, supra, p. 28.

[278]P.L. 97-377.

[279]Testimony of Adolfo Calero, Joint Hearings on the Iran-Contra Investigations, May 20, 1987 (hereafter "Calero Testimony"), p. 13; Prado Deposition, supra, p. 30. The

In May of 1983, ARDE began armed combat under the direction of the CIA.[280] Supplies were dropped in to them in Guanacaste, a province on the west coast of Costa Rica, near the farm of the Cuban-American Aldolfo Jiminez, where they were training.[281] Defendant Hull was their CIA contact, along with a Colombian named "Armando." By July of 1983, and possibly earlier,[282] the CIA was supplying ARDE with arms. One shipment contained 500 AK-4 rifles sent from Israel via Venezuela

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CIA contact for the Costa Rican-based contras was a man named Ivan, although Dewey Clarridge and persons identified as Armando and Carlos were also involved. Id., pp. 30-31. The Senate Intelligence Committee, after a visit to Central America by Senator Leahy and staff, reported that the covert action program was "growing beyond that which the Committee had initially understood to be its parameters." Iran-Contra Congressional Report, p. 33, n. 23.

[280]Pastora Deposition, supra, p. 12-17.

[281]Pastora insisted on the southern front in Costa Rica as a geographical base. This posed a problem for the U.S. Administration which claimed that its only purpose in aiding the contras was the interdiction of arms to El Salvador in the north. Iran-Contra Congressional Report, p. 32.

[282]William Crone testified that he was involved in air drops of military supplies, including AK-47 rifles, pistols and ammunition, as early as the Spring of 1982. Deposition of William Crone, January 6-7, 1988 (hereafter "Crone Deposition"), pp. 169-170.

to Costa Rica.[283] By April 1984, the CIA was funnelling $400,000 per month to ARDE.[284]

Certain persons in the CIA suggested blowing up bridges in Nicaragua as early as the fall of 1983,[285] when according to classified CIA briefings to Congressional intelligence committees, the proposed 500-man force had reached a strength of 8,000.[286]

At the same time, the CIA was forming a single contra operation in Honduras by throwing out of the movement those who did not agree to join, including Brooklyn Rivera and Fernando ("El Negro") Chamorro. Chamorro moved his group to Costa Rica and joined Pastora.[287]

Supplying the Contras: NSC Staff Members Begin to Violate the Law

In February of 1982, Robert McFarlane, then deputy National Security Advisor, set up a secret military cooperation program to hide the paramilitary and supply activities of Casey and his associates in Central America from Congress which both utilized the Enterprise and foreshadowed its later activities. McFarlane went to David Kimche, then director general of the Israeli Foreign Ministry and set in motion the relationship that would lead to the Iran-contra scandal. In 1982, Israel began selling

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[283]"Pulling a CIA Plug," Newsweek, September 3, 1984.

[284]Chronology, supra, p. 55.

[285]Pastora Deposition, supra, p. 16-17, 24.

[286]New York Times, June 14, 1983.

[287]Pastora Deposition, supra, pp. 5-6.

millions of dollars' worth of military equipment to Honduras, Guatemala and Costa Rica, some of which was passed through to the contras and providing trainers for the Honduran and Guatemalan governments. In return, the White House agreed to increase aid to Israel to offset the costs Israel had accrued.[288]

In addition, Israel provided the contras with millions of dollars' worth of Soviet-made weapons that it had captured from the Palestine Liberation Organization when it invaded Lebanon in 1982 in exchange for favorable prices on American-built fighter planes. Defendant Secord, then deputy assistant secretary of defense for international security affairs in the Near East, Africa and South Asia, was the person who, in his private capacity, made sure the weapons reached the contras. The weapons were shipped to the CIA warehouse in San Antonio, where the serial numbers were removed, and then went on to the contras.[289]

Operation Elephant Herd: Transfers of U.S. Government Equipment to the Contras

In the summer of 1983, William Casey began secret preparations to assure continued resources for the contras if Congress cut off aid. On July 12, President Reagan directed that the Department of Defense support those efforts with "free-of-charge" transfers of equipment to be stockpiled by the CIA. On July 13, 1983, the CIA requested that the Pentagon provide $28 million of military equipment to the contras by declaring it "surplus" so that it could not be counted against any Congressionally imposed ceilings. The scheme was code-named "Operation

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[288]Emerson, supra, pp. 122-3.

[289]Emerson, supra, p. 123.

Elephant Herd". "In short," according to the Iran-Contra Congressional Report, "money appropriated by Congress for one purpose would be used for another, bypassing any limits Congress might place on CIA appropriations, such as the then-pending Boland-Zablocki bill."[290]

The Pentagon refused on the basis that it was a violation of the Economy Act, which prohibits one agency from transferring funds or assets to another agency without charging it, and because the 1981 finding signed by President did not justify even a paid transfer of equipment to the CIA. Casey obtained a new finding on September 19, 1983, authorizing covert actions to destabilize the government of Nicaragua. The CIA submitted a request for equipment valued at less than $12 million, which was approved.[291]

A total of 40 attacks against Nicaraguan targets took place in 1984 using Elephant Herd material, including speedboat attacks on the ports of San Juan del Sur and Corinto.[292]

Pentagon's "Black" Aviation Operation: The Enterprise Takes Hold

In 1981, the Pentagon formally established Seaspray, a joint Army-CIA "black" aviation unit ostensibly run by the Army's Special Operations Division. Its mission was to provide quick, clandestine transportation of men and supplies for covert operations. It was part of a new Army program to conduct "covert operations . . . in support of the Office of the Joint Chiefs of Staff." It was integrated

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[290]Iran-Contra Congressional Report, p. 34-5.

[291]Emerson, supra, pp. 133-4.

[292]Emerson, supra, p. 134.

into a CIA proprietary company, Aviation Tech Services. Seaspray supported signal intelligence operations, transported foreign leaders, ferried Delta soldiers, assisted in drug busts and worked with other counter-terrorism forces in exercises and rescue operations. Congress was never notified of its operation.[293] By 1982, it was operating in Central America.

In 1982, the Army's Special Operation Division decided to establish a "black" commercial transportation capability. Defendant Richard Secord, who was still in the Air Force, claimed to be instrumental in setting it up. In September of 1982, Richard Gadd, an Enterprise associate, retired from the Air Force and created Sumairco, a subsidiary of Vinnell Corporation of Nebraska, to specialize in that operation.[294] (Vinnell, a defense contractor, also has an ongoing contract to train the Saudi Arabian National Guard.) After obtaining a $1-million, noncompetitive contract from the Army, Gadd rented his planes and trained pilots through Southern Air Transport, a CIA proprietary. He participated in the invasion of Grenada[295]

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[293]Emerson, supra, pp. 45-7.

[294]Vinnell was a large defense contractor and had trained the Saudi National Guard. Gadd left Vinnell after several months, taking Sumairco with him. Emerson, supra, pp. 143-4.

[295]Gadd used two pilots for this operation which involved flying helicopters from California to Barbados for use by the CIA. One of the pilots Gadd hired was Wallace "Buzz" Sawyer, Jr., who was later killed in the arms-laden C-123 cargo jet owned by Southern Air Transport which crashed inside Nicaraguan territory. Emerson, supra, p. 145.

and intelligence mission in Honduras. In May of 1983, after Secord was forced into retirement because of his dealings with EATSCO and the Enterprise, he rented office space from, began to work with, and steer military business to, Gadd. In October of 1983, the Army attempted to hire Secord for the joint CIA-Army aviation unit. The CIA, however, refused to give him an "operational" clearance because of the Justice Department's continued investigation of his affiliation with Edwin Wilson.[296]

Despite his lack of a CIA clearance, Secord became a consultant to the NSC and a member of the Pentagon's Special Operations Advisory Board, a group of retired senior military officers who met regularly to discuss top-secret special operations issues. In those positions, he became well-acquainted with Oliver North, whom he had known since 1981 when they worked together on the sale of AWACS radar planes to Saudi Arabia.[297] By 1983, the two were discussing the benefits of using private companies as commercial cut-outs for such military operations.[298] Lt. Col. Oliver North had worked on the planning of the Grenada invasion and became aware of the opportunities that a private "black: transport capacity, such as Gadd's operation could provide. Defendant Secord became

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[296]Testimony of Richard V. Secord before the Joint Congressional Committees, May 5-8, 1987 (hereafter "Secord Congressional Testimony"), Exhibit 22 (memorandum from Michelle A. Martin, CIA Office of General Counsel, to Carl Darby, Office of Security, October 6, 1983).

[297]Steven Emerson, supra, pp. 146-7.

[298]Emerson, supra, p. 146.

"North's tutor on these matters" during this time.[299]

In late July of 1983, the Army Special Operations Division opened the "Yellow Fruit" operation under the guise of Business Security International to carry out a number of clandestine operations. The top Army leadership was not aware of the Yellow Fruit operation or BSI. One of its first jobs was to train Honduran-based contras in Florida to pilot small planes for raids on Nicaraguan industrial facilities. Another was to train contra pilots for high-risk bombing runs.[300]

Shortly after BSI opened, two Yellow Fruit agents received a binder from Rudy Enders containing a plan to supply weapons and money to the contras if Congress cut off funds.[301] The plan had three components: (1) the funneling of weapons to the contras through inflated sales of equipment to countries, including Honduras, Guatemala, Brazil and Argentine; (2) the use of offshore bank accounts for the contras; and (3) the construction of air strips in Costa Rica so that a southern front could be developed. One of the construction sites would be the farm of Defendant John Hull. By the fall of 1983, a Yellow Fruit operative had visited areas on the southern front to take pictures of possible landing zones.[302] Yellow Fruit's operations, however, were abruptly aborted when its key members were fired and eventually court-martialed for

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[299]Emerson, supra, p. 146.

[300]Emerson, supra, p. 151.

[301]Emerson, supra, p. 152.

[302]Emerson, supra, p. 152-3.

misuse of funds.[303]

Nonetheless, the schemes to militarily assist and obtain legal and illegal funding for the contras continued. The U.S. Congress was not cooperative, however. In October of 1983, it placed a $24-million cap on contra funding and barred the CIA from avoiding the cap by using any of its contingency funding for the contras. The CIA and the National Security Council responded by mining Nicaraguan harbors and attacking fuel tanks. It was hoped that these efforts, combined with an attack by Pastora on San Juan del Norte, would result in the installation of a provisional government prior to the time funds ran out.[304] In early 1984, it became publicly known that Dewey Clarridge, then a high-level CIA official, had conceived of and implemented the plan to mine the harbors of Nicaragua, thereby causing an international uproar that resulted in indications by Congress that it would cut off aid to the contras.[305]

In 1983, there was also prepared and distributed to the contras a manual advocating the "neutralization" of Nicaraguan government officials with the Selective use of violence." The assassination manual, which was revealed in the press in October of 1984, was in direct conflict with Executive Order 12333 signed by President Reagan in 1981 which prohibited political assassinations. Six CIA officials were disciplined for their improper participation in the preparation and distribution of the manual. One of them

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[303]Emerson, supra.

[304]Iran-Contra Congressional Report, supra, pp. 35-6, citing, e.g., North/Menges Memo, dated October 19, 1983, entitled "Special Operations: Nicaragua."

[305]Cockburn, supra, pp. 10-1.

was Joseph Fernandez (also known as Tomas Castillo), who was subsequently promoted to CIA station chief's position in San Jose, Costa Rica and played an important role in the Enterprise's operations there. Fernandez, who was then stationed in Honduras, had worked with the contras since at least 1982.[306]

The mining of Nicaraguan harbors and the distribution of the manual violated international and United States law. In June 1986, the United Nations' International Court of Justice ruled that the United States had violated Nicaragua's rights and owed reparations for these violations. The Court also ruled that the counter-allegations of the United States that Nicaragua was smuggling arms to El Salvador were not supported by the evidence. The United States, after arguing unsuccessfully in the jurisdictional phase of the World Court proceedings that the Court lacked jurisdiction, refused to accept the jurisdiction of the Court, an action for which it has been widely criticized.

Singlaub Supplies Weapons and Explosives

In early 1984, it is believed that Defendant Singlaub organized a shipment of lethal weapons, ammunition and C-4 explosives to the contras. Some of the C-4 was shipped to the contras operating on Defendant Hull's ranch and were later used in the construction of the bomb which Defendant Galil used to blow up the La Penca press conference.

Shortly thereafter, the Fulton County Police Department began to investigate the movement of weapons and C-4 through Atlanta to Central America by a company called Overseas Press Service. Defendant Singlaub was a "consultant" for Overseas Press who knew

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[306]The Chronology, supra, pp. 20-1.

W. Dennis Suit and Walter Gold, two of the company's directors. Gold had earlier helped the American Security Council, a conduit for private aid to the contras, make a pro-contra documentary. E.E. Nixon, Fulton County's chief of detectives, contacted the FBI in the summer of 1984 about his discovery, but said that he didn't want to continue if he was going to "step on the toes" of any government agency. The FBI conducted its own investigation, but it was quickly closed. Most of the documents are now classified as "national security" documents.[307] Nixon stopped his investigation after a personal call from North.

Hull and Jones: Supply of the Southern Front

Meanwhile, several of the defendants became active in unlawfully supplying military assistance to the contras on behalf of the Enterprise. Defendant John Hull was a CIA operative who was known as such to Jose Blandon, formerly Panama's chief of political intelligence, as early as 1981.[308] Hull assisted the contras in the southern front by

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[307]"Atlanta Firm Linked to Contra Network," In These Times, April 14, 1987; "North's 'Security Officer' Linked to Alleged Arms Network," In These Times, August 19, 1987; telephone conversation with FBI Office of Legal Counsel, March 28, 1988.

[308]Deposition of Jose Blandon, February 24, 1988 (hereafter "Blandon Deposition"), p. 17. Jeffrey Feldman, an assistant U.S. attorney who attempted to investigate Hull in 1986, was also told by the CIA station chief that Hull was an operative prior to 1984. Deposition of Jeffrey Feldman before the Joint Iran-Contra Congressional Committees, April 30, 1987 (hereafter "Feldman Deposition"), pp. 52-53, 100.

providing supplies from his farm in northern Costa Rica,[309] and using his plane to fly supplies and men into airstrips near the Costa Rican-Nicaraguan border and to contra bases.[310] These supplies included arms.[311]

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[309]Prado Deposition, supra, p. 29. Pastora was having difficulty with Defendant Hull and Dewey Clarridge, a CIA officer frequently at Hull's farm, because he would not join the FDN, led by Defendant Calero. Pastora said the CIA wanted him to blow up bridges, which Pastora considered to be a terrorist act. Pastora Deposition, supra, p. 17.

[310]Crone Deposition, supra, pp. 151-152.

[311]Crone Deposition, supra, p. 165. Jose Coutin testified to Hull's receipt of military equipment for the contras in 1983. Deposition of Jose Coutin, March 9, 1987 (hereafter "Coutin Deposition"), p. 42. Defendant Jones testified to the receipt of 5,000 rifles, 5 million rounds of ammunition, hand grenades, Claymore mines and mortars. Deposition of Bruce Jones, December 3, 1987 (hereafter "Jones Deposition"), p. 113-114. George Morales, a drug dealer who also ran an air charter business, testified that he had delivered 40 M-79 grenade launchers from Miami to Ilopango Air Force Base in El Salvador for Defendant Hull in 1983 without the proper export license; Defendant Jones testified to storing M-79s. Deposition of George Morales before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications (hereafter "Morales Deposition") pp. 19, 56; Jones Deposition, supra, p. 93. Panama's chief of political intelligence also testified that prior to his meeting with Hull in December of 1983, his intelligence resources told him that Hull was providing

Defendant Hull was aided by two neighbors, Defendant Bruce Jones, who lived on property owned by Lacuna Co., one of Hull's operations,[312] and William Crone, another North American living with Hull.[313] Hull, Crone and Jones helped the contras in receiving air drops of military and other supplies.[314] Not surprisingly, one of the contras frequently found at Hull's ranch was Ian Kniloch, the chief of the contras' air logistical support operation.[315]

As part of their activities in Costa Rica, Defendants Hull and Jones worked with a related, right-wing paramilitary group called Hueta Norte which trained on Hull's ranch. Jones later described it as an organization he hoped to use as a Costa Rican death squad.[316] Jones also participated in "operational patrols" with Pastora's troops and stated that he was "armed and prepared for whatever came along on, perhaps, four occasions."[317] His

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arms to the contras. Blandon Deposition, supra, pp. 16-17 and 25.

[312]Jones Deposition, supra, 12-14.

[313]Crone Deposition, supra, pp. 150-155. Defendant Jones testified that he was initially approached by Harold Martinez, who worked with Pastora and Popo Chamorro, in 1982 to help develop the logistics infrastructure. Jones Deposition, supra, pp. 29-34.

[314]Crone Deposition, supra, pp. 169-170.

[315]Prado Deposition, supra, p. 34.

[316]Anderson and Anderson, supra, p. 268.

[317]Jones Deposition, supra, pp. 43-44, 55-56. Jones stated in an interview in 1986 that while on patrol with

code name on those operations was "Flaco Verde."[318]

Certain persons in the U.S. embassy in Costa Rica were fully aware of Hull's role and, in fact, coordinated Hull's operations. Prior to every air drop of supplies, an employee in the political section of the embassy would communicate a message through Hull's office that Hull or Crone should contact the embassy and ask for "Thomas," which was a code name for the supply operation and referred to several different people. A "Thomas" would then provide information to Hull or Crone about the air drop.[319] Hull and Crone would then fly the contras to the drop zone and help pack and transport the supplies.[320] Supplies also went to air strips in Guanacaste Province on the western side of Costa Rica.[321] In addition, certain persons in the embassy paid for various "safe houses" used by Hull and the contras.[322]

Defendant Jones has stated that between May 1982 and May 1984, there were approximately 100 deliveries of arms and supplies to the contras coordinated by

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the contras, he fired his rifle and engaged in combat. John Lee Anderson, "A C.I.A. Man in Nicaragua," Life Magazine, February, 1985 (hereafter Life Magazine Interview).

[318]Jones Deposition, supra, p. 180.

[319]Crone Deposition, supra, pp. 155-156, 173-180.

[320]Crone Deposition, supra, pp. 181-182.

[321]Jones Deposition, supra, p. 95.

[322]Crone Deposition, supra, pp. 249-252.

Defendants Hull and Jones.[323] At times, Jones, who testified that he was responsible for Pastora's Tango and Luna Rojas bases, kept M-79 grenade launchers and other military equipment in his warehouse, which he provided to the contras for operations inside Nicaragua.[324] He stated that the arms were kept in various warehouses around northern Costa Rica and distributed from there.[325] Jones was also aware that in early 1984, C-4 explosive was transported from San Jose to the southern front.[326] In November or December of 1984, Jones traded an Uzi submachine gun to a member of Pastora's forces for four pounds of pre-prepared C-4 explosive.[327]

The arms sometimes came from El Salvador where Defendant Quintero was operating. Quintero met with Eden Pastora in early 1984 to offer financial and logistical assistance. In March of 1984, two pilots who were flying military supplies to ARDE for Quintero were killed.[328]

Defendant Jones was also involved in the actual shipment of military supplies for the contras from the United States to Costa Rica, a violation of the Arms Export Control Act and other state and federal laws.

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[323]Jones stated, "We'd know the date the planes were coming and we'd wait for them. We'd unload the ships in five or ten minutes -- they never turned their engines off." Life Magazine Interview, supra.

[324]Jones Deposition, supra, p. 92-94.

[325]Jones Deposition, supra, p. 94-95.

[326]Jones Deposition, supra, p. 62.

[327]Jones Deposition, supra, p. 68.

[328]Prado Deposition, supra, p. 45.

Jesus Garcia, who had been recruited by Defendant Tom Posey to aid in the contra resupply effort, stated that in 1985, he saw crates containing C-4 explosives in Defendant Jones' hotel room in a Howard Johnson Motel in Miami.[329] Defendant Jones also trained contra recruits and planned and participated in attacks on Nicaragua.[330]

The defendants and the persons within the U.S. embassy and the CIA with whom they were in contact were fully aware that their activities were in violation of Costa Rica's neutrality laws.[331] On March 24, 1984, a DC-3 resupply plane carrying armaments en route from El Salvador to Pastora's Tango base in Nicaragua crashed in northern Costa Rica.[332] All seven men aboard the plane died, and some of them appeared to be Americans. The pilot was Renato Torrealba, a Nicaraguan. The first to arrive at the scene were Defendants Hull and Jones, one Phil Holtz (or Holts) and two CIA contract agents and

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[329]"Obstruction at Justice," Village Voice, March 31, 1987.

[330]Life Magazine Interview, supra. Jones was training for an ambush on two Nicaraguan garrisons when he was interviewed. The attacks took place a week after the interview. Life apparently went with Jones on five contra missions; Prado Deposition, supra, p. 33. Jones was subsequently declared a "persona non grata" by the Costa Rican government and forced to leave the country. "U.S. Citrus Farmer Declared 'Persona Non Grata,'" Tico Times, March 1, 1985.

[331]Jones Deposition, supra, p.64.

[332]Jones Deposition, supra, pp. 96-101.

some of Pastora's men,[333] who wanted to locate the plane before Costa Rican officials did in order to dispose of the sophisticated navigational gear on board and the bodies. In an effort to conceal the identity of the dead, Holtz ordered that the teeth and jaws be removed. The bodies were then burned and buried, probably in Nicaragua.[334] Later, Holtz asked Pastora to dig them up and put them in plastic bags. They were then turned over to Holtz' associates and taken away in a plane.[335]

The United States Army recently revealed that it possesses documents on the crash, but they are classified "secret." The DC-3 had been confiscated during a narcotics investigation in 1983 and was released from FAA custody without going through the usual paperwork because the FAA official was told that it would be used for military purposes.[336]

The Costa Rican government was aware of the activities on Defendant Hull's ranch. The Directorate of Intelligence and Security (DIS), the Costa Rican internal

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[333]"Army Has Secret Files on Crash," Newsday, December 24, 1987; Jones Deposition, supra, p. 98; Prado Deposition, supra, p. 46.

[334]"Army Has Secret Files on Crash," Newsday, December 24, 1987.

[335]Pastora Deposition, supra, pp. 60-62. Defendant Jones stated that a decision was made to bury the bodies and mark the graves so that later they could be exhumed for a "decent Christian burial, with the patriotic honors that they merit." Jones Deposition, supra, p. 111.

[336]"Army Has Secret Files on Crash," Newsday, December 24, 1987.

intelligence and security force, conducted surveillance on Hull's ranch from early January to mid-April of 1983, at which point someone ordered the surveillance to stop.[337] The Panamanian government also knew of Hull's role in assisting the contras. In December of 1983, Jose Blandon, Panama's head of political intelligence, with the assistance of Pastora, met with Hull in the home of Daniel Oduber, former president of Costa Rica, to discuss Panama's position that Pastora should return to Nicaragua peacefully and seek a negotiated settlement with the Sandinistas. Hull was adamant that the Nicaraguan government must be overthrown militarily.[338]

By mid-1983, Defendant Hull was seeking to replace Pastora as the leader of the contras in Costa Rica. In July 1983, Hull, Crone and Luis Rivas, one of Pastora's commanders, traveled to Washington, D.C., to attempt to convince members of Congress that Pastora should not be supported because he was still controlled by the Nicaraguan government.[339] They were driven around Washington by Colonel Joseph Yurko, a retired Army colonel who also owns property in Costa Rica near

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[337]Deposition of Alberto Guevara Bonilla, May 4, 1987 (hereafter "Guevara Deposition"), p. 32.

[338]Blandon Deposition, supra, pp. 18-20, 25, 29-30; See, also, Testimony of Jose I. Blandon before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications, February 9, 1988 (hereafter "Blandon Testimony").

[339]Crone Deposition, supra, pp. 119-126. Crone further testified that "John Hull has expressed, to almost anybody that would listen, that he thought Pastora was a front for the communists." Id., p. 196.

Defendant Hull. One of the offices they visited was that of Senator Daniel Quayle of Indiana, where they met Defendant Robert Owen, at that time a legislative aide to Senator Quayle. Owen contacted other Congressional aides to talk to the group, one of whom was Vaughn Forrest, administrative assistant for Rep. Bill McCollum (R-Fla.).[340] Owen also introduced them to Lt. Col. Oliver North at the National Security Council.[341]

A trip to the Pentagon put the group in touch with the Yellow Fruit operatives. The Yellow Fruit plan, devised at least partially by Defendant Secord, would supply military assistance and equipment to the contras as part of an illegal covert security-intelligence project. By the time Hull left Washington, it was agreed that Yellow Fruit agents would assist in the building of airstrips on Hull's ranch as part of the opening of the southern front, and an operative soon visited.[342] Because of Owen's interest in "finding out about the fighting capability of Pastora and the southern front", Hull and Crone invited him to come to Costa Rica.[343] Owen quickly became an active member of the Enterprise.

In the interim, Defendant Hull recognized that Pastora's support in the U.S. Congress prevented him from taking any immediate steps to supplant Pastora. In

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[340]Continued Deposition of Robert Owen, February 8-9, 1988 (hereafter "Owen Deposition"), p. 83.

[341]Crone Deposition, supra, p. 136.

[342]Emerson, supra, p. 152.

[343]Crone Deposition, supra, pp. 132-3. By early, 1983, it was clear that North and Owen were working closely with Hull. Iran-Contra Congressional Report, supra, p. 36.

November of 1983, Defendant Hull mediated a dispute between Pastora and Alfonso Robelo, one of Pastora's allies, who wanted to join with Defendant Calero's FDN.[344]

Arrival of the Cuban-Americans

Members of the Cuban-American community had also met with representatives of Somoza after his overthrow in July, 1979. In late 1979 or early 1980, Jose Coutin, a member of the Accion Sindical Independiente and the Cuban Legion, who had received paramilitary training from the CIA, learned of a group that wanted to "go back and fight the communists[in Nicaragua]". The Legion offered to help Maliano Urcuyo, who had briefly held the presidency of Nicaragua after Somoza fled, and was living in exile in Miami. By 1981, the Legion was meeting with Somoza's former military officers, including Pedro Emilio Salazar ("Commandante Bravo"), who were attempting to organize a military effort against the Nicaraguan government.[345]

The Cubans also began to run their own arms supply operation to Costa Rica. On August 6, 1981, Max Vargas, a Nicaraguan exile in Miami who has been identified by the Justice Department as a CIA operative, bought two AR-15 rifles at the Costa Gun Shop in Miami and sent them to Fernando ("El Negro") Chamorro, one of the leaders of a group fighting against the Nicaraguan government from Honduras. Raul Arana, Chamorro's agent in Miami, also told federal investigators that he flew several large arms shipments from Miami to Honduras in

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[344]Crone Deposition, supra, p. 230.

[345]Coutin Deposition, supra, pp. 14, 16, 26-33.

1981.[346]

In 1981, Defendant Jorge ("Bombillo") Gonzalez, a former U.S. Special Forces member and convicted bomber,[347] and the Cuban Legion operated paramilitary training camps in Florida. Special attention was given to recruits being prepared as a mini-rapid deployment force. One of the people taking "retraining" at Gonzalez' camp was Defendant Felipe Vidal.[348] Vidal, whose father was executed by Fidel Castro in 1964, had been arrested at least seven times in Miami on narcotics and weapons charges.[349] Vidal described his goal as providing a

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[346]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[347]Defendant Gonzalez served four years in the federal penitentiary in Atlanta for sabotage bombings of U.S. territorial waters of ships owned by companies that did business with Cuba. Gonzalez was also a close associate of Orlando Bosch, who spent five years in a Venezuelan jail for masterminding the bombing of a Cubana Airlines plane which killed all 73 passengers. "Cuban Exiles and 'Refugees' Training for Another Bay of Pigs," Covert Action Intelligence Bulletin, August-September 1980.

[348]Coutin Deposition, supra, p. 21-2 and 38. Vidal's father was a member of the Alpha 66 group and was killed during an expedition to Cuba after the Bay of Pigs. Jones Deposition, supra, p. 81-82. Anderson and Anderson, supra, pp. 248-250.

[349]"State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

permanent paramilitary infrastructure for an "international anti-communist brigade" to be based in Costa Rica. He soon began training hundreds of men in Miami to fight against the Nicaraguan government.[350]

Defendant Rene Corvo (or Corbo), whom Jose Coutin knew from Brigade 2506, came to Coutin to request financial support for a paramilitary group Corvo was training to go to Nicaragua. Corvo was the leader of a Miami-based Cuban exile group called the Nicaraguan Anti-Communist Aid Committee (CANAC)[351] and a suspect in the bombing of the Continental Bank in Miami.[352] The financial backers of CANAC included Frank Castro, a convicted drug trafficker, and Defendants Francisco (Paco) Chanes and Dagoberto Nunez.[353] Corvo had been given large sums of money to buy military equipment in late 1982 or early 1983 for this project. One of the donors was Teofilo Babun, who had earlier worked with the CIA in Cuba.[354]

Two members of the Cuban Legion went to Costa Rica in early 1983 because of the recruitment efforts of Armando Lopez Estrada and Adolfo Jiminez, a pilot in the

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[350]Anderson and Anderson, supra, p. 249, citing interview with Felipe Vidal.

[351]"CIA Role in Arming Contras Seen Larger Than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[352]Feldman Deposition, supra, p. 34.

[353]Coutin Deposition, supra, pp. 43-44.

[354]Coutin Deposition, supra, p. 33-36.

Bay of Pigs invasion.[355] In approximately May of 1983, they were followed by Defendants Corvo and Vidal.[356] After Vidal, Corvo and some other Cuban-Americans from Miami arrived in Costa Rica, they began to approach Pastora. They were already aware of Hull's role in assisting the contras.[357] Vidal and Corvo went to Defendant Hull's farm and asked him to arrange a meeting with Pastora about volunteering the services of a number of their Miami-based, associates.[358] Pastora testified that he had received a letter from Vidal offering to join as a security force and support for the leadership.[359]

Contra leaders Carlos ("Carol") Prado and Adolfo ("Popo") Chamorro, representing Pastora, were invited by Col. Rodrigo Paniagua, a former official of the Costa

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[355]Jimenez lives in the province of Guanacaste in Costa Rica where he is active in right-wing organizations. "Costa Rica: Seeds of Terror," The Progressive, September 1986. Lopez Estrada was deported from Costa Rica in 1986 after he admitted that he was been hired by the Reagan Administration to train contras in Costa Rica. The Times of London, August 16, 1986.

[356]Coutin Deposition, supra, pp. 33-39. The two Cuban Legion members were Jose Mascia and Pedro Jil (or Hill). Id. at 38. Jil helped finance Defendant Corvo's first mission.

[357]Jones Deposition, supra, p. 81.

[358]Jones Deposition, supra, p. 81. Jones testified that he put Vidal and Corvo in touch with Pastora. Id., p. 84.

[359]Pastora Deposition, supra, p. 20.

Rican Ministry of Public Security,[360] to meet with Col. Carlos Zeledon and Defendant Vidal. Vidal indicated that he was recruiting people to fight with Pastora. Pastora -- who may have feared they were agents of Fidel Castro[361] -- subsequently refused the Cubans' offer.[362] Prado described Defendant Vidal as appearing like a terrorist -- "he spoke about attacks, he spoke about bombs . . . about activities in New York of that type."[363]

The Cuban Americans, however, were integrated into another ARDE camp near El Castillo by the summer of 1983 and were operating with ARDE officers Tadeo and Tonio Vargas.[364] Corvo and Vidal were frequently at the office of, and in the company of, Defendant Hull.[365] By

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[360]Eden Pastora identified Col. Paniagua as the "principal support" of Defendants Vidal, Corbo and others; and the "main promoter" of the La Penca press conference. Pastora Deposition, supra, p. 37-38.

[361]Jones Deposition, supra, p. 84.

[362]Pastora Deposition, supra, p. 17; Prado Deposition, supra, pp. 35-37. Defendant Vidal was with another Cuban named Paz, who may have been Eduardo Paz. Id.

[363]Prado Deposition, supra, pp. 35-36.

[364]Prado Deposition, supra, p. 37; Jones Deposition, supra, pp. 84-85; Pastora Deposition, supra, p. 17.

[365]Owen Deposition, supra, p. 106; Crone Deposition, supra, p. 226. Crone testified that he saw Corvo in a contra camp inside Nicaragua. Crone Deposition, supra, p. 223. FBI Agent Kevin Currier, who interviewed Corvo in 1986, confirmed that at that time that Corvo was "the second in command at the camp", and that Corvo was

the fall of 1983, Pastora was told by his American contacts that they wanted him to take orders from Defendants Vidal and Corvo. Pastora testified that Vidal and Corvo criticized his political position and his failure to join the "Somocistas" [the FDN].

Subsequently, Vidal and Corvo broke with Pastora and formed a splinter group called M-3.[366] Eduardo Paz and Rafael Perez, two of the Cubans rejected by Pastora, joined M-3, which was composed of Cuban-Americans, Panamanians and Costa Ricans and engaged in military activity.[367] In late 1983, Defendants Vidal and Corvo participated in invasions of Nicaragua, probably from the Atlantic coast and delivered aid to contras operating inside Nicaragua.[368] Two M-3 mercenaries, Ubaldo Hernandez Perez and Mario Eugenio Rejas Lavas, were recruited in 1985, captured in Nicaragua in June of 1986 and sentenced to 30 years. They remain imprisoned in Nicaragua. Hernandez said they were trained in Florida, San Salvador and Costa Rica.[369]

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recruiting persons in Miami to fight with the contras. Deposition of Kevin W. Currier, FBI special agent, Miami Division, before the House Select Committee to Investigate Covert Arms Transactions with Iran, May 5, 1987 (hereafter "Currier Deposition"), pp. 46-47.

[366]Pastora Deposition, supra, pp. 22-23.

[367]"Group Seeks Cuban Exile Aid in Nicaragua Fight," Miami News, November 24, 1983.

[368]Pastora Deposition, supra, p. 106.

[369]"Two 'Mariel Contras' Languish in Jail," Miami Herald, December 30, 1987.

In late 1983 or early 1984, when several Cuban Legion members inquired as to whether they could join Corvo, the Legion sent Rolando Valdez to Costa Rica to review the situation.[370] While at Defendant Hull's ranch, Valdez saw an American helicopter land and was told by Hull to stay in the house while military equipment was being unloaded.[371]

In mid-1984, three Cuban Legion members, Orlando Ponce, Jose Sosa and Marcellino Rodriguez, went to Costa Rica, where they were met by Defendant Corvo who had supplied them with plane tickets based on false passports. Earlier, Sosa and Rodriguez had seen Defendant Corvo preparing packages of handguns, ammunition and dynamite, all weighing less than 70 pounds, at his house in Miami for shipment on TACA, the El Salvadoran national airline. Col. Paniagua cleared the packages through customs so they would not be opened.[372] It was Eden Pastora's understanding that the Cubans brought supplies to Defendant Hull's farm that were mainly from private individuals.[373]

Ponce, Rodriguez and Sosa stayed in Costa Rica for three weeks during which they were taken to a farm near the Nicaraguan border for training. When they returned, disillusioned, to the United States, they reported that drugs, believed to be cocaine, were being shipped to the United States in shrimp containers by Defendants Nunez

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[370]Coutin Deposition, supra, pp. 41-43.

[371]Coutin Deposition, supra, p. 42-43.

[372]Coutin Deposition, supra, pp. 57-58.

[373]Pastora Deposition, supra, p. 24.

and Frank Chanes.[374]

The defendants attempted by a variety of ways to get their recruits into Costa Rica, a country with strong neutrality laws. Defendant Corvo and Frank Castro asked William Crone to help bring some Latino men, who were training in a paramilitary camp in Miami, into Costa Rica through some of the air strips Crone knew.[375] Defendant Hull approved the plan.[376] Sometime later, however, one of the "Thomases" from the U.S. embassy warned Crone to stay away from Castro because "he was under investigation for drugs or arms trafficking."[377]

According to Eden Pastora, there were 30 to 40 Cuban-Americans operating on one of John Hull's farms near the Nicaraguan border and taking order from Defendants Corvo and Vidal.[378] In 1985, Defendants

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[374]Coutin Deposition, supra, p. 60. They reported this allegation and their observation of arms shipping to the Miami Police Special Intelligence Service, and were subsequently contacted by the FBI. Id., pp. 63-69.

[375]Crone Deposition, supra, p. 204.

[376]Crone Deposition, supra, p. 219.

[377]Crone Deposition, supra, p. 221.

[378]Pastora Deposition, supra, pp. 17-9. Carol Prado identified the farm as Monico, where there was also an airstrip. Prado Deposition, supra, p. 37. When Jeffrey Feldman an assistant U.S. attorney from Miami, and Kevin Currier, an FBI agent, came to Costa Rica to investigate the activities of Defendants Hull, Vidal and Corvo in April of 1986, they found that Corvo was leading approximately 50 people from Hull's ranch. Feldman Deposition, supra,

Vidal and Corvo separated. Corvo continued to work in the Nicaraguan-Panamanian-Cuban camp he had established on Defendant Hull's ranch, and Vidal working primarily with the Kisan-South segment of the Miskito Indians, an assignment he was given by Defendant Owen and a man calling himself "Frank Smith." Owen and Vidal controlled all of their funds. Later, after the Iran-contra scandal broke, Vidal became the CIA's liaison to the southern front.[379] In 1986, Vidal was arrested by the Costa Rican Rural Guard with arms and drugs and escaped back to Florida. He later returned to Costa Rica.

La Penca: The Enterprise Attempts to Assassinate Pastora

It is believed that the preliminary discussions concerning a plan to assassinate Pastora were at meetings attended by, among others, Defendants Hull, Vidal, Corvo and Calero in or around January 1984 in Costa Rica, Honduras and Miami. The assassination plans was finalized in a meeting in February 1984 between Vidal, Corvo and Defendant Francisco "Paco" Chanes. Defendants Cruz and Saenz are believed to have been aware of the plan to kill Pastora and were involved in planning the escape of the assassin. They occurred at the same time Pastora was resisting pressure to join forces with the FDN.

It is believed that the following chain of events occurred which led to the La Penca bombing: Defendant Chanes sent Vidal and Corvo to his two Miami partners, Frank Castro and Rolando Martinez. Castro and Martinez

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p. 53. Currier later interviewed Corvo and confirmed the camp. Currier Deposition, supra, pp. 46-47.

[379]Coutin Deposition, supra, p. 66; "State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

then sent Vidal and Corvo to Niles Heinz who sent Corvo and Vidal to meet Defendant Ramon Cecilio Palacio, reportedly "chief of security" in Miami for Defendant Jorge Ochoa. In February 1984, Vidal and Corvo met in Miami with Palacio who introduced them to Defendants Raul and Jorge Villaverde, known as the "Gris Brothers."[380] The Villaverdes took Vidal and Corvo to Chile to meet Amac Galil who apparently was working for Chilean Dictator Pinochet where they agreed to pay Galil $50,000 to plan and execute the Pastora's assassination. Between March and May 1984, Galil travelled from Chile, via Panama to Honduras and Costa Rica, where he went to Hull's ranch. Hull met repeatedly with Galil during this time and travelled with Galil to the Nicaraguan border where Galil took numerous photographs of the area. On Hull's ranch, Galil obtained from Hull three kilograms of C-4 explosive which had been smuggled onto the ranch through the efforts of the Enterprise.

During this time, Defendant Singlaub and Robert K. Brown also travelled to Central America with John "I.W." Harper, an explosives expert who had been involved in earlier ventures of the Enterprise in the Middle East. In 1984 and 1985, at the behest of Singlaub and Brown, Harper trained contras in the use of explosives and booby traps. At Defendant Singlaub's direction and with Singlaub's knowledge, Harper taught the contras how to construct bombs that use timing devices and C-4 explosives--the kind that was used in the La Penca

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[380]Jose Blandon, former head of political intelligence for Panama, described the Villaverde brothers as being "very well known" in the intelligence community. Blandon was aware of their connection to the La Penca bombing. Testimony of Jose Blandon, February 24, 1988 (hereafter "Blandon Testimony"), pp. 66-7.

bombing.[381] Harper trained the contras in the use of C-4 explosives; specifically for use as anti-personnel weapons for the purpose of killing people.[382] It is believed that Defendant Singlaub and Brown provided the services of Harper to Defendant Amac Galil to assist in constructing the C-4 bomb used for the La Penca bombing.

In late 1983 and early 1984, Defendant Hull and the CIA began to pressure Pastora to join the FDN. Contra leaders Alfonso Robelo and Arturo Cruz, Sr., also participated[383] in the campaign to demonstrate that Pastora was the only obstacle to bringing down the Nicaraguan government. Pastora believed that he was being "sentenced to death" by the campaign, and asked for a meeting with the CIA. Clarridge (traveling under the name "Dewey Maroni") came from the United States, but Pastora then asked for a meeting with the head of the National Security Council. In January of 1984, Pastora and Alfonso Robelo met with Robert McFarlane and Clarridge in the White House. Pastora was later told by Arturo Cruz, Jr., that "Oliver North was sick and tired of us."[384]

In March and April of 1984, Pastora was subject to

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[381]Wheaton Deposition, supra, pp. 160-162, 174. Harper also gave the contras medic training in the event of accidental explosions. Id.

[382]Wheaton Deposition, supra, pp. 163-164, 173-174.

[383]Pastora testified that Cruz had said that Pastora's supplies should be dried up in addition to attempting to undermine his lieutenants. Pastora Deposition, supra, p. 28.

[384]Pastora Deposition, supra, pp. 30-2.

renewed pressure by persons in the CIA to join with the FDN contras based in Honduras. In late April or early May of 1984, Carlos Coronel, Popo Chamorro and Alfonso Robelo met with persons in the CIA in Honduras and promised that Pastora would join with the FDN.[385] However, when Pastora and his military leaders met with General Lopez, head of the Honduran military, in early May to discuss unity with the FDN, no agreement was reached,[386] and ARDE began to undergo a "profound crisis."[387] Pastora was then given an ultimatum from

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[385]Deposition of Eden Pastora, supra, p. 63 and 66-7. Carlos Prado described a meeting in Tegucigalpa at which Dewey Clarridge, Fernando Chamorro, Popo Chamorro, Carlos Coronel and Alfonso Robelo were present. The discussion concerned a proposed joint military command under the control of General Gustavo Alvarez Martinez, chief of the Honduran army. Alvarez was a graduate of the Argentine Military Academy who was the key Honduran contact with the contras and cover for their activities. Dickey, supra, pp. 115-7. Prado Deposition, supra, p. 50.

[386]Deposition of Eden Pastora, supra, p. 65-6.

[387]Pastora was supported by one faction which criticized the "hysterical pressure of some people for unity with the FDN." They issued a communique on May 22, which stated:

> We consider traitorous to political principles and to the historic project of ARDE those attitudes which try to impose with pressure, manipulations and false expectations, a hasty and irresponsible union, clumsily driven by dark forces, something which

Clarridge and conveyed by Robelo that he must join the FDN by the end of May. Robelo told Pastora that Pastora "would be the only guilty one", and that his story would be "stopped" if he did not join.[388]

During this same period, a meeting was held by Nicaraguan exiles in Miami to discuss the assassination of Pastora. A tape of the meeting was made and obtained by Pastora. The exiles stated that the FDN and the "gringos" intended to "eliminate" Pastora.[389]

> would be artificial and ephemeral. . . . We categorically condemn the permanent manipulation that interested sectors are making against Comandante Eden Pastora Gomez, the principal military and political figure in Nicaragua today, making Pastora seem an obstacle to unity, when in fact Comandante Pastora is the forger of unity not only within ARDE but also among all the Nicaraguan people in their struggle against the current administration.

A spokesman for the Robelo-Chamorro group, the other faction, said that the problem was that Pastora wanted to be the ultimate military head and to purge ex-National Guard members from the FDN." Union with FDN Provokes Differences in ARDE," La Nacion, May 22, 1984.

[388]Pastora Deposition, supra, p. 69; Prado Deposition, supra, p. 51-2.

[389]Transcript of tape provided by Prado; Prado Deposition, supra, pp. 49-50. Prado testified that Rafael Espinoza, a former National Guardsman from Nicaragua, was present at that meeting, and that the remaining

In late March or early April of 1984, Alberto Guevara Bonilla, the driver for Carlos Monge, director of the intelligence and security agency of the government of Costa Rica, was directed by memorandum "dated in San Jose" to make a vehicle available for a man he later described as a "false Danish" photographer at the Civil Guard's main station in Boca Tapada. Guevara was told that the man was doing some journalistic work. The "photographer", who used the name "Per Anker Hansen", was accompanied by a woman. A jeep was provided; the couple left the Civil Guard station, went to the northeast in the direction of La Penca, Nicaragua, and returned six or seven hours later.[390] Guevara recognized the man because Guevara had been ordered by Monge to keep "Hansen" under surveillance in December of 1983 when "Hansen" was seen at the Hotel Costa Rica, the National Park and the Gran Via Hotel.[391] At the Hotel Costa Rica, "Hansen" was with the same woman.[392] In December of 1983, Hansen and a Cuban were detained briefly by Costa Rican authorities.

Approximately 22 days before the bombing at La Penca, "Hansen," the woman and Defendant Hull arrived again at the Civil Guard station in Boca Tapada in an

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participants were all Nicaraguan. Id., p. 75.

[390]Deposition of Alberto Guevara Bonilla, (date) (hereafter "Guevara Deposition"), pp. 2-5.

[391]Deposition of Fernando Cruz, May 11, 1987 (hereafter "Cruz Deposition"), Exhibit C (report from OIJ Office of Special Affairs to Lic. Mainor Calvo Piedra, OIJ General Director).

[392]Guevara Deposition, supra, pp. 8 and 34-5.

orange Toyota driven by Hull. They again had an order from headquarters, and were provided with a boat. "Hansen" was carrying a silver metal case "eight inches in the width, twelve inches high," a camera and a leather case. They stated that they were going up the river to the northeast.[393] The metal case had a sticker that said "fragile USA Postage" on it.[394] "Hansen" apparently went to the contras' Tango base and attempted to contact Pastora. Pastora talked to him by radio.

> He was hanging around the river, giving out cameras and cigarettes. The guys already were calling him "compa" - companion . . . He asked me for an interview. Since I told him about the impossibility because of the distance. . . . He told me that with that interview we were going to make videotapes and TV programs and that with that we could promote propoganda [sic] and get funds. . . . I told him again that it was impossible because of the distance . . . . In the first days of May he had been travelling all round.[395]

(After the bombing at La Penca, ARDE personnel provided Organismo de Investigaciones Juridicas (OIJ - the Costa Rican FBI) with several video tapes made some

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[393]Guevara Deposition, supra, pp. 5-8.

[394]Guevara Deposition, supra, p. 20.

[395]Deposition of Eden Pastora, pp. 67-68.

weeks earlier showing Hansen taking photographs of the site of the bombing and its surroundings.[396])

Pastora's refusal to join the FDN contras caused a break with Robelo and a great deal of tension within ARDE. Pastora publicly accused the CIA of attempting to force him to merge with the FDN. As a result, Pastora planned a press conference to announce his break with the rest of ARDE.[397]

On May 29, 1984, the day before the La Penca bombing, Col. Paniagua, the "protector" of Defendants Vidal and Corvo's group of Cuban-Americans in Costa Rica, visited Pastora "nine or eleven times" to pressure Pastora to hold the press conference the following day. When Pastora refused, Paniagua stated that Johnny Campos, the vice minister of public security, wanted the press conference. Paniagua made all of the arrangements for the press conference, and Campos personally persuaded Pastora in a meeting at 1 a.m. on May 30 to have the press conference "because the government of Costa Rica is asking . . . for it." The stated reason was that an earlier press conference by Pastora in Panama appeared to have occurred in Costa Rica, and the Costa Ricans wanted to "prove" that Pastora was not in their country. Pastora finally left for La Penca with 30 or 40 of his group.[398]

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[396]Cruz Deposition, supra, Exhibit C (report from Office of Special Affairs to Lic. Mainor Calvo Piedra, general director of OIJ).

[397]Prado Deposition, supra, p. 53.

[398]Deposition of Eden Pastora, supra, pp. 38-9, 72 and 75. Pastora testified that he never saw Col. Paniagua, who normally contacted him two or three times a week, Campos or Hull again after the La Penca bombing. Id., p.

That same evening, Monge, Francisco Tacsan, an adviser to the Ministry of Public Security who was associated with a terrorist group called the "babies",[399] and other officials met with various ARDE people, including Pastora and Fernando ("El Negro") Chamorro, in Escazu to discuss security for the press conference. Because the group was leaving from San Jose, Guevara testified that "certain base security measures were required because we were not going to play with the country's sovereignty and we didn't want anything to happen from the starting point to the meeting site."[400]

On the day of the press conference, "Hansen" and the woman were at the Irazu Hotel with the group of journalists going to La Penca.[401] Hansen was traveling with a Swedish journalist named Torbiornsson and a Bolivian named Fernando Prado.[402] "Hansen" brought with

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72. Prado said Campos told Pastora he wanted the press conference to demonstrate that Pastora was not in Costa Rica as President Monge was in Europe to prove that Costa Rica was neutral. Prado Deposition, supra, pp. 54-5.

[399]Guevara Deposition, supra, pp. 16-7.

[400]Guevara Deposition, supra, p. 35.

[401]Guevara Deposition, supra, pp. 10 and 14; Deposition of Roberto Cruz Sandoval (hereafter "Cruz Sandoval Deposition"), p. 17.

[402]Cruz Sandoval Deposition, supra, p. 61. Prado was also injured. Id.

him a large aluminum case.[403] The journalists traveled by car and then two hours by boat to reach La Penca, arriving at about 7 p.m. The press conference was held in an old wooden house. Because of the darkness, Pastora planned to hold the formal press conference the next day, but the journalists began to ask questions about ARDE's internal problems and the possibility of unity with the FDN. "Hansen" placed the aluminum case on the floor near the spot where Pastora, surrounded by the journalists, was standing. He snapped a few pictures and, muttering loudly that his camera was malfunctioning, backed away from the crowd. An ARDE sentry saw "Hansen" in the bushes outside the house right before the explosion. When challenged, "Hansen" said he had come outside to "take a leak." At 7:20 p.m., the bomb exploded. Eight people died. Others were seriously wounded. Plaintiff Avirgan suffered shrapnel wounds, a mangled hand and burns.[404] He was incapacitated for two months. His business property was also destroyed.

At approximately 8 p.m., ARDE radio reported the explosion. Although several people were killed and others badly injured, no assistance was provided to the injured for approximately four hours.[405] When informed that Americans had been injured, the U.S. Embassy refused to respond. The injured were eventually taken to the hospital in Ciudad Quesada. "Hansen" and Torbiornsson left at 8:30 a.m. the next day and, with the woman, took a cab back to La Gran Via, their hotel in San Jose, where

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[403]Honey and Avirgan, La Penca, Report of an Investigation, 1985 (hereafter "Honey and Avirgan"), p. 6.

[404]Honey and Avirgan, supra, p. 7.

[405]Cruz Sandoval Deposition, supra, p. 30.

"Hansen" immediately checked out saying he was going to Miami. Because Costa Rica did not close the borders for 48 hours, "Hansen" was able to leave.[406]

Defendant Owen was in Costa Rica staying at the San Jose apartment of Defendant Hull on the night of the La Penca bombing with Hull, Phil Holtz and some unidentified Nicaraguans. Owen had been sent on a trip to Costa Rica and Honduras by Oliver North to meet with Defendant Hull, Holtz and various contras to assess the "needs" of the contras if their U.S. support funds were cut off. Owen was accompanied on his trip by Vaughn Forrest, administrative assistant to Rep. Bill McCollum (R-Fla.).[407]

Defendant Owen testified that at 3:30 a.m., three Nicaraguans associated with Pastora came to wake Defendant Hull and ask that he go to La Penca to pick up the wounded. Hull called Holtz and was advised not to go.[408] At about 5 a.m., he called Bill Crone, who was also in San Jose that night and had a plane available, and "warned" Crone that if someone called him to pick up the wounded, Crone should not go "because it may be a trap or I might get in trouble, or something."[409]

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[406]Honey and Avirgan, supra, pp. 7-9.

[407]Deposition of Rob Owen, February 9-10, 1988 (hereafter "Owen Deposition"), p.76-80. Forrest testified that he went along to assess "humanitarian aid" needs. Deposition of Vaughn Forrest, February 16, 1988 (hereafter "Forrest Deposition"), p. 87.

[408]Owen Deposition, supra, p. 372-3.

[409]Deposition of William H. Crone, January 6-7, 1988, pp. 237-8.

The Cover-Up of La Penca

Persons involved in the contra resupply network and the assassination attempt immediately began cover-up activities. Defendant Jones testified that shortly after the bombing, he was asked by Holtz to "get up to La Penca . . . and get any sort of residues that was available" for analysis in Washington. According to Defendant Jones, Holtz told him that every lot of C-4 has a slightly different chemical texture so that it can be traced back to its source "to help in the identification in the event it's used in a terrorist attack." He believed this was the reason for Holtz' request. Jones said that he was not able to get permission from Pastora's people to go to La Penca.[410]

Defendant Jones also testified that C-4 was a very restricted item for the contras -- as opposed to commercially made land mines -- and

> controlled strictly from San Jose . . . every last ounce of it had to be accounted for . . . There was a, I'm sure, a trail of responsibility there, from the Central Intelligence Agency to the specific function for which that amount of explosive would be available . . . For instance, for power lines [that] fed power from . . . Costa Rica to Nicaragua . . .
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> [T]he Contras, at one point, blew down four or five of those power lines within Nicaragua using C-4 explosives. It was calculated what size the towers were, how to place the explosives, and down to the last ounce, how much would be needed, in what shape. And they were pre-made for that specific

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[410]Jones Deposition, supra, pp. 243-4.

job.[411]

Another North American sent in from Panama to "help" in the lab work done in Costa Rica to analyze the bomb fragments was much more successful in derailing the investigation. After he left, the detonator which is the "signature" component of a bomb, was missing.

Within 24 hours after the bombing, persons within the CIA and the State Department began a disinformation campaign by providing a story to major newspapers, including the New York Times and the Washington Post, and networks that the bomber was a Spanish Basque terrorist hired by Nicaragua.[412] It was subsequently learned that the alleged "bomber" was under house arrest in France on May 30, 1984.[413] Persons within the U.S. Embassy in Costa Rica also mounted a public campaign to discredit Pastora as a communist and a drug trafficker and worked with Defendant Hull to provide arms to any of Pastora's troops who would defect.[414]

Eden Pastora was clearly the target of the La Penca bombing. His death would eliminate both a political obstacle to the union of ARDE and the FDN and create a situation in which Nicaragua could be accused of the

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[411]Jones Deposition, supra, pp. 60-1.

[412]The day after the attack, U.S. intelligence sources were quoted on ABC television blaming ETA for the attack. "Jimenez Morales Exonerates ETA of Responsibility for Bombing Attempt," La Prensa Libre, June 5, 1984. Need to find those other stories.

[413]La Nacion, June 10, 1984.

[414]Deposition of Eden Pastora, supra, p. 83.

assassination.[415]

When evidence was gathered from the site by the Civil Guard after the bombing, one item found was a woman's wig, which Guevara identified as having been worn by the woman accompanying "Hansen." "I remember certain things. I hadn't seen that type of hair in anyone before and I saw her at the hotel."[416]

The Organismo de Investigaciones Juridicas (OIJ) of Costa Rica (a government agency comparable to the Federal Bureau of Investigation) conducted an investigation of the bombing and concluded that it had been carried out by "Per Anker Hansen," an alias used by Defendant Galil.[417] The chemical compound used was the explosive C-4, which was located in the suitcase which also contained a remote control device. The bomb was detonated by a radio frequency. OIJ's forensic expert concluded from the debris that the bomb was homemade, contained two to four pounds of a high-powered explosive, plus other types of explosives. The remains were found near eight batteries used for detonation purposes.[418]

"Hansen" was traveling on a false Danish passport stolen in December of 1980 from the Copenhagen apartment of a 28-year-old student, and had entered Costa Rica by land from Panama on February 29, 1984, in the

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[415]Pastora Deposition, supra, p. 108; other sources?

[416]Guevara Deposition, supra, p. 13.

[417]Cruz Deposition, supra, p. 27, citing official reports attached as Exhibits B, C and G.

[418]Cruz Deposition, supra, pp. 23-27, and Exhibit G (OIJ report entitled "Description of Explosives" prepared by Gustavo Castillo Montoya).

company of a woman named Patricia Anne Boone Marescot, who was traveling on a false French passport. On March 2, he left for Mexico. Between March 3-26, 1984 he was in Honduras.[419] "Hansen" had initially entered Panama on May 17, 1982, and had also traveled to Peru in 1983.[420]

While in Panama City, he had lived in a luxury, high-rise apartment near the university and claimed to be writing a book on Panama. "Hansen" told Torbiornsson that he had been in New York, Miami, Mexico and Honduras before going to Costa Rica. Between March 3 and 26, 1984, "Hansen" and "Boone" were in Honduras at various hotels around the country.[421] "Hansen" appeared to be familiar with Argentine and Uruguayan literature and music and sent post cards to both Uruguay and Chile. He spoke Spanish fluently.[422]

Despite the attack, on June 22, 1984, Pastora attended a meeting in Washington, D.C., at the home of Arturo Cruz at which Carol Prado, Alfredo Cesar, Joe Fernandez (Tomas Castillo), Arturo Cruz and Dewey Clarridge, Alan Fiers (who was going by the name of Albert Fenton) and

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[419]Honey and Avirgan, supra, p. 10.

[420]Cruz Deposition, supra, Exhibit B (letter from Allan Salano Aguilar, OIJ Special Affairs Office to the Embassy of Peru in Costa Rica) and Exhibit C (report from OIJ Office of Special Affairs to Lic. Mainor Calvo Piedra, OIJ general director).

[421]Honey and Avirgan, supra, pp. 10-11.

[422]Honey and Avirgan, supra, pp. 11-2.

Vincent Cannistraro were present.[423] Clarridge told Pastora that they knew who the identity of the bombers, but needed a few more details before announcing it. Clarridge then offered to help Pastora set up a political movement to be headed by Cruz, Alfredo Cesar and Pastora.[424] On July 5, however, Pastora was told by Fiers that the money --$80,000 a month -- would go to Robelo, not Pastora.[425] During this same period of time, Defendant John Hull was provided with $10,000 per month from Defendant Calero to feed, cloth and provide medical supplies for the contras camped on the Costa Rican border.[426]

During that meeting, Castillo told Pastora that Defendant Hull was part of the CIA, that Hull felt that his life was being "threatened" by Pastora, and that nothing should happen to Hull. Later in Costa Rica, Arturo Cruz, Jr., told Pastora that Oliver North was "annoyed" with Pastora because Pastora blamed him for the La Penca bombing, and "that there are reasons for Oliver North to believe that."[427]

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[423]Prado Deposition, supra, p. 62. Dewey Clarridge was using the name Maroni Id.

[424]Deposition of Eden Pastora, supra, pp. 84-85.

[425]Pastora Deposition, supra, p. 87-8; Prado Deposition, supra, p. 63.

[426]Statement of John Hull in "CIA Paid Bill to Guard U.S. Rancher Who Aided Contras," The Washington Times, July 24, 1987.

[427]Pastora Deposition, supra, pp. 46-7.

Posey and the CMA

Other defendants were also involved in the operation to actively and illegally supply explosives and military equipment to the contras prior to the La Penca bombing. In July of 1983, Defendant Thomas V. Posey, a Vietnam veteran living in Decatur, Alabama,[428] formed the Civilian Military Assistance (CMA) project, ostensibly to aid the Salvadoran government in its civil war by sending combat instructors and arms.[429] By the fall of 1983, Defendant Posey was taking steps to provide arms and personnel to the contras in Honduras. On November 1, he applied to the Bureau of Alcohol, Tobacco and Firearms for a firearms export license supposedly to buy weapons and ammunition for El Salvador.[430] However, three days later, Defendant Posey to steps to contact the contras in

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[428]Deposition of Thomas V. Posey, January 11, 1988 (hereafter "Posey Deposition"), p. 16.

[429]Defendant Posey was apparently working with Defendant Singlaub who testified before Congress that in the "early 1980s" he began to assist El Salvador by bringing former U.S. military personnel to El Salvador to provide counter-insurgency training to the army. Singlaub Testimony, supra, p. 184. Robert K. Brown, publisher of Soldier of Fortune and another Singlaub associate, stated that a team he organized trained hundreds of Salvadorans. "U.S. Civilians Fighting Mad," USA Today, (undated).

[430]National Security Archive, The Chronology: The Documented Day-by-Day Account of the Secret Military Assistance to Iran and the Contras (Warner Books, 1987) (hereafter "Chronology"), p. 42.

Honduras.[431] He wrote to Brig. Gen. Gustavo Alvarez Martinez, then chief of the Honduran Army, and offered to help fight with the contras. Alvarez Martinez immediately invited Posey to Honduras and put him in touch with Alfonso Callejas, an FDN official. Callejas encouraged CMA to take on missions to assist the contras.[432]

By the end of December of 1983, Posey had amassed a group of former U.S. military personnel and active members of various U.S. State National Guard units for the purpose of organizing an American-based, paramilitary operation to train, equip, finance and actively participate in military field operations with the contra forces in Central America against the U.S.-recognized government of Nicaragua.[433] These activities violated the Neutrality Act, the Arms Export Control Act and various other state and federal laws.

The mercenaries engaged in CMA's contra support activities were meeting at a certain hotel in Tegucigalpa to finalize their plans for obtaining military equipment for and providing other federally prohibited aid to the contras.

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[431]"Volunteer Group Asked CIA to Aid in Contacting Rebels," Washington Post, September 12, 1984, citing hearings before the Senate Select Committee on Intelligence.

[432]"Vietnam Vets Sought Last Shot at Communists," Houston Post, September 16, 1984, quoting Posey; "CMA Making War on Drugs," Huntsville Times, July 10, 1986, quoting Posey.

[433]Brian Barger, "Fools Rush In: The Inside Story of Viet Vets in Central America," The VVA Veteran, February 1985.

The planning continued in CMA's executive committee meetings during the early months of 1984. Overtly criminal activities were planned and agreed to by Defendant Posey during those meetings, including violations of the Neutrality Act, the Federal Arms Export Control Act, various federal firearms and explosives statutes and other federal and state laws.

In January of 1984, Posey, CMA's Dana Parker and another CMA member flew down to Honduras in a Piper Cherokee-6 plane piloted by William Courtney from Redstone Arsenal in Alabama to Honduras.[434] Parker, an undercover agent for the Huntsville, Ala., police department, was also commander of the First Detachment, A Company, Twentieth Special Forces Group of the Alabama National Guard, a group used to funnel arms and equipment to the contras.[435] On this trip to Honduras, Posey and his associates brought nine automatic pistols and 400 rounds of ammunition.[436]

Posey claimed that the CMA would prosecute the war against the government of Nicaragua which the U.S. Congress did not have the political conviction to undertake. Posey said, "We decided that civilians could do something if the military couldn't."[437] In an interview with the Huntsville Times in January of 1984, Defendant Posey admitted to participating in patrols with contras along the

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[434]Chronology, supra, p. 57; Birmingham News, September 14, 1984.

[435]Cockburn, supra, pp. 13, 92-93.

[436]Kornbluh, supra, p. 82; Cockburn, supra, p. 15.

[437]"CMA Making War on Drugs--Posey," Huntsville Times, July 10, 1986.

Nicaraguan border. He said he had fired 300 rounds from his M-1 rifle at Nicaraguan troops "in self-defense", and that his rifle butt had been discolored, perhaps by someone "running into it."[438]

It was Defendant Posey's clear understanding and intention that this military equipment be used against the unarmed civilian population of Nicaragua to terrorize them and destabilize the government. As his activities became more controversial, Posey told the press than his people were only going to train Nicaraguans, but his recruits were told that they would be fighting.[439]

The alleged criminal acts of Defendant Posey include obtaining surplus U.S. military equipment from the 20th Special Forces Unit of the U.S. Army in Alabama and obtaining the use of an allegedly surplus U.S. Armed Forces airplane in New Jersey in which to transport this material from U.S. territory, via Ilopango Air Base in El Salvador, to Costa Rica, Honduras and Nicaragua. Clearly marked U.S. military equipment was observed by mercenary and CMA member Jack Terrell in Defendant Posey's garage, awaiting shipment.[440]

Posey was in close contact with Defendant Adolfo Calero, chief executive officer of FDN. With the assistance of Defendant Calero's brother, Mario Calero,

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[438]"Soldier Harvest Is Plentiful in Fields of North Alabama," Memphis Commercial Appeal, September 7, 1984.

[439]Coutin Deposition, supra, p. 115.

[440]Jose Coutin also testified that Defendant Posey in early 1985 discussed weapons shipments with Jose Fernandez, a Cuban-American whose family had a weapons factory in Spain. Coutin Deposition, supra, p. 122.

who was the logistics chief for the FDN working out of New Orleans, Defendant Posey arranged for volunteers to go to Central America to train and fight with the Miskito Indians against the government of Nicaragua. By May of 1984, Posey had sent three paramilitary training teams to Honduras.[441] In September, two of CMA's volunteers, Dana Parker and Jimmy Powell, were killed during a contra raid on the Santa Clara military training school in Nicaragua when the helicopter they were in was shot down in Nicaragua.[442]

According to Defendant Calero, Parker, Powell, four other CMA members and Mario Calero had arrived in Honduras only a week earlier, allegedly to do training.[443] However, prior to its implementation, senior U.S. government officials were aware of the planned raid, as well as the participation of the CMA personnel. Lt. Col. Oliver North, who was in Honduras on the day of the raid, reported that he and Dewey Clarridge, the CIA chief of Latin American operations, had "urged that the operation be postponed because the rockets necessary for the attack had to be saved for potential use against the next arms

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[441]"Two Americans Called Volunteers," Washington Post, September 5, 1984.

[442]"Mystery Man Says He Was Paid to Probe CMA's Contra Efforts," Memphis Commercial Appeal, April 13, 1986; "Nicaraguan Rebels Say U.S. Veterans Help Them," New York Times, September 5, 1984; "Two Americans Called Volunteers," Washington Post, September 5, 1984.

[443]The other Americans included Cliff Allbright, Walter Blanton and Louis McKnight. "Two Americans Called Volunteers," Washington Post, September 5, 1984.

delivery."[444]

The Santa Clara raid was the direct result of Operation Elephant Herd. The raid was carried out by three Cessna O2s, formerly belonging to the New York National Guard, which had been declared "excess" in December of 1983, and the FDN's only helicopter. After being assigned to Operation Elephant Herd, the Cessnas were turned over to Summit Aviation for conversion for military use.[445] The deaths of Parker and Powell resulted in a report by members of the Congressional Arms Control and Foreign Policy Caucus charging that the "apparent failure of U.S. officials to attempt to halt the activities of CMA or other groups sending cash and aid to the contras adds strength to the case that the Neutrality Act may be being violated." The caucus alleged that the Arms Export Control Act, the 1984 Defense Appropriation Act and the Foreign Assistance Act may have been violated.[446]

Operation Pegasus: Invasions and Assassinations

In September of 1984, CMA member Joseph ("Shooter") Adams, a former Marine Corps intelligence officer who trained with the Pentagon's elite DELTA Force command unit and worked as an instructor for a Navy SEAL team, became Defendant Calero's personal

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[444]Memorandum from Oliver North to Robert McFarlane, dated September 2, 1984, and entitled "FDN Air Attack of 1 September." Iran-Contra Hearings, Exhibit OLN-254.

[445]Cockburn, supra, pp. 12-16.

[446]"Volunteer Group Asked CIA to Aid in Contacting Rebels," Washington Post, September 12, 1984, citing report.

bodyguard, accompanying Calero to most of his appointments. In October of 1984, Jack Terrell (Colonel Flaco), a former mercenary, volunteered to work with Defendant Posey and CMA to form a Green Beret-style special forces unit to fight with the contras.[447]

Defendant Posey, Terrell and other CMA members then began to plan a commando-style raid into Nicaragua with American veterans and contras as part of what was called "Operation Pegasus." Operation Pegasus was a military plan which would culminate in the full-scale American-led invasion of Nicaragua. It involved attacks on key targets in Nicaragua and assassinations of Nicaraguan officials and civilians.[448] Implementation of the plan included conspiracies to commit murder and arson, foreign travel and communications to further crimes of violence, violations of arms export regulation and the commission of other crimes in which a large number of the defendants played a role.

Terrell and other CMA leaders met with Enrique Bermudez, the military leader of the FDN. Terrell and Posey then recruited ten other mercenaries and flew to Honduras in mid-November.[449] The FDN paid their

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[447]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[448] "Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26.

[449]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal,

transportation costs. They were originally trained by Frank Camper at a paramilitary school in Alabama.[450] Upon arriving in Honduras, this group reported to the FDN contra bases in Honduras at La Quinta and Las Vegas,[451] where training exercises began. They carried with them rifles, boxes of ammunition and medical supplies. Once in Honduras, their passports and other identification were taken away to prevent identification if they were captured during their raid into Nicaragua. Their first mission abruptly came to an end, however, when the Memphis Commercial Appeal wrote an article about their location and plans after interviewing Jack Terrell.[452]

As part of his plan to develop a military capability in Central America, Defendant Posey requested the help of

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January 15, 1987.

[450]"Misfortune Tarnishes Honduran Adventure," Memphis Commercial Appeal, December 5, 1984. Traveling with Terrell were Jim Turney of Collierville; David Ormand of Corinth, Miss.; Bob Bradford of Tallahassee, Fla.; Richard Thompson of Lawton, Okla. "Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984; "Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

[451]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," Wall Street Journal, January 15, 1987.

[452]"Band Beats War Drums for Nicaraguan Strike," Memphis Commercial Appeal, December 4, 1984. "Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

the Cuban Legion, which was already supporting Defendants Corvo's and Vidal's efforts in Costa Rica.[453] Jose Coutin, a Legion member, became Posey's "recruiting director" in December 1984 to find Cuban-Americans not only for training, but for combat roles.[454] At approximately the same time, Defendant Posey went to Costa Rica to meet with Defendant Hull and determine how he could further help the southern front.[455]

A Second Conspiracy to Assassinate Pastora

In December of 1984, Defendant Calero suggested to Jack Terrell that Terrell meet with Defendant Hull to discuss training contras on Hull's ranch. Calero made the arrangements by giving Terrell a telephone number in Denver, Colorado, where Hull could be reached. Terrell then called Hull and arranged a meeting in Houston.[456] Two weeks later, Terrell and CMA member Lanny Duyck met with Defendant Hull, who was accompanied by Defendant Owen, at the Shamrock Hilton Hotel in Houston. They discussed the need to have American mercenaries train contras in Costa Rica to strengthen the southern front based on Hull's ranch and to take over from Pastora. The mercenaries were to carry out combat attacks against Nicaragua. When Terrell asked how this operation would be financed, Owen claimed that he took $10,000 per month to Hull from the National Security Council and could get more if needed. When Terrell

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[453]Coutin Deposition, supra, pp. 112-116.

[454]Coutin Deposition, supra, p. 81-83.

[455]Jones Deposition, supra, p. 132.

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brought up the fact that Eden Pastora already had forces in the southern front, Hull went into a tirade, calling Pastora a communist and declaring that Pastora had to be killed. Terrell was then asked to formulate a plan to kill Pastora.[457]

Two weeks later, a larger group of American mercenaries, including Defendant Posey and Terrell, and contras met at Defendant Calero's home in Miami to continue planning this second assassination attempt on Pastora.[458] Terrell listed those in attendance as Defendants Calero, Owen, Posey, Hull, Vidal and Galil, Joe Adams, Donald Lecayo (an associate of Hull's),

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[457] Testimony of Jack Terrell in Hull v. Avirgan and Honey, a libel case tried in the First Penal Court in San Jose, Costa Rica, on May 22, 1986, reprinted in La Penca: On Trial in Costa Rica (hereafter "Terrell Testimony"), pp. 84-7. "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987; Cockburn, supra, pp. 69-70. Defendant Owen admitted that he attended this meeting. He said that Terrell proposed sending down 200-300 Americans to the southern front, and Posey wanted to train the contras on Hull's ranch under the aegis of a commander named Jesus. At that point, Owen said he left the meeting to call Aldolfo Calero and Oliver North to ask why Hull was talking to Terrell. He stated that he was out of the room for approximately 15 minutes (to call North and Calero) so and did not know what was discussed when he was gone. Owen Deposition, supra, pp. 236-239, 245.

[458] Terrell Deposition, supra, Exhibit 2; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26; "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987.

Enrique Bermudez, Aristides Sanchez (a member of the FDN directorate), a Cuban named Rojas and Lanny Duyck.[459] In his testimony in Costa Rica, Terrell described the meeting as follows:

> The purpose of the meeting was to obtain approval of the FDN Directorate to carry out the Costa Rican plan. In this meeting, we discussed the same things as in the other, but in this meeting it was decided that I would not go to Costa Rica but rather that Tom Posey would go instead. That he would remain for a week, reviewing the situation

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[459]Terrell Testimony, supra, p. 85; Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26; "Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987. Defendant Owen has confirmed that this meeting took place. Owen stated that there "may have been" a discussion of contra unification at the meeting, and that some people said that Pastora was "a difficult person to work with," but that the discussion concerned Terrell's offer to sell weapons from the Miskito Indians to the other contra groups, and Posey's and Adams' plans to send men from Costa Rica and Honduras to go inside Nicaragua and blow up bridges. Owen Deposition, supra, pp. 250-260.

Jose Coutin, who planned to attend the meeting, but did not, was briefed by Terrell, Adams and Posey after the meeting and was informed that Defendants Chanes and Corvo. Coutin testified that he had sent Marcellino Rodriguez to pick up Posey and Terrell and take them to Calero's home. After the meeting, Coutin, Posey and Terrell met at the Howard Johnson Motel near the airport. Coutin Deposition, supra, pp. 86-96.

> and later he would report it back to me. During this meeting we spoke of the same things, including Eden Pastora, and the financing or who would pay and the overall plan for Costa Rica because the new front would be known as UNIR. Adolfo Calero was angry with statements made by Pastora. He said that Pastora had said that the FDN was homicidal, Somicista sons of bitches. He stated in the presence of these people that Pastora had to go. I knew nothing about Pastora with the exception of what I had heard.

Terrell testified that the group also conspired to kill Pastora. "All these people who were present knew what we were discussing and no one was negative about what we had discussed. I raised the question with my friends that were present that if a person from the National Security Council and the CIA were present, then we must have approval from the U.S. Government to carry out these acts that could put us in prison or get us killed for what we knew."[460]

During the meeting, Defendant Vidal told Terrell that Defendant Galil was a Mossad official "and . . . he used the name of Amac Galil. . . During the meeting in Calero's house Felipe stated that "we put a bomb under him [Pastora] and it didn't work because of bad timing."[461] Terrell later construed this to be a reference to the La Penca bombing.[462]

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[460]Terrell Testimony, supra, pp. 84-87.

[461]Terrell Testimony, supra, p. 88

[462]"Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987.

Terrell's contemporaneous notes of the meeting recorded the following:

> The 'termination' of Zero [Pastora] discussed . . . . Adolfo Calero very upset with statements made by Pastora. Says he too Sandinista. Must die. Big problem. Asks me to put it together and note to tell them how it will be done. Seems Rob Owen is in on most of this . . . . Must appear that Sandinistas did it. Discussion on capturing Zero and having men dress in captured uniforms. Am told this must be very visible hit and people must believe the Sandinistas did it. Am told to let Hull know when ready to move . . . . A.C. open to anything. He desperate. Wants and needs southern front."[463]

Terrell then formulated a plan to kill Pastora and make it appear as though the Sandinistas had done it. Defendants Calero and Hull were to be participants in the attempt. However, Terrell decided to abandon the plan as too risky.[464]

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[463]Deposition of Jack Terrell, February 25, 1988 (hereafter "Terrell Deposition"), Exhibit 5 (excerpts from diary of Jack Terrell); "The Dirty Dealing in the underground Contra Aid Network," In These Times, December 10-6, 1986.

[464]"Mercenary Places Owen at Talks on Pastora Killing," Providence Sunday Journal, May 10, 1987. Terrell is quoted as saying: "You got...two members of the U.S. government in there [Hull and Owen]...listening...and I don't see a no vote in the house. So I start feeling funny about the whole thing." Terrell figured that such

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Nos. 91-(3)

In The
Supreme Court of the United States
October Term, 1991

Daniel P. SHEEHAN and THE CHRISTIC INSTITUTE,

Petitioners,

versus

John HULL, Moises Nunez, Jorge Gonzalez, Adolfo Calero, Robert Owen, Thomas Posey, John Singlaub, James McCoy, Ronald Joseph Martin, Sr., Rafael "Chi Chi" Quintero, Mario Delamico, Thomas Clines, Theodore Shackley, Richard Secord, and Albert Hakim,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

Petitioners' Joint Appendix
Volume II

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Counsel of Record

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The plan to kill Pastora was only one of several assassination plots planned as part of Operation Pegasus.[465] In January of 1985, based on remarks of a CIA officer who said he was passing on "suggestions from Washington," Defendants Calero and Posey, FDN military commander Enrique Bermudez and others met and prepared a list of Nicaraguan civilians to be assassinated when the contras entered Managua as part of the Operation Pegasus, American-led invasion. The list included a nun, priests, Daniel Ortega, Nicaragua's president, Foreign Minister Miguel d'Escoto, and Nora Astorga, Nicaragua's ambassador to the United Nations, Adams, who has described his specialty as "close-in urban tactics," was requested to train an elite urban team for "house-clearing techniques. . . . The list came to me because I probably was the one who'd have to squeeze on some of these guys."[466]

Plotting the Assassination of a U.S. Ambassador

At a meeting in Memphis, Tennessee in January of 1985, a group of American mercenaries, who worked with CMA and the defendants conspired to assassinate Lewis Tambs, the newly named U.S. ambassador to Costa Rica, and collect the $1 million reward placed on Tambs by

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important people wouldn't let him out of Costa Rica alive if the assassination succeeded. Id.

[465]Allan Nairn, "The Contras' Little List," The Progressive, March 1987, pp. 24-26.

[466]Adams described "house-clearing" as going "in and kill[ing] all the bad guys and get[ting] the good guys out." Nairn, "The Contras' Little List," The Progressive, March 1987, p. 24.

Colombian drug dealers. Other targets were the U.S. embassy, the Costa Rican presidential offices, and Brooklyn Rivera and Urbina Lara. All of the attacks were to be blamed on the Sandinistas.[467]

Later that month, Defendant Posey was arrested on a gun possession charge at Miami International Airport.[468] While at the Dade County Jail, he recruited Jesus Garcia, the booking officer, into the arms supply network.[469] Posey also attempted to get Garcia's help for the assassination plots. In early February 1985, at the Howard Johnson Motel in Miami,[470] the Tambs assassination and bombing was discussed in greater detail. Attending this meeting were Defendant Posey, Jones, Corvo and Hull and mercenaries Steven Carr, Robert Thompson and Sam Hall. A blueprint of the U.S. embassy in San Jose was presented

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[467]Martha Honey, "Gunpowder, Treason & Plot," This Magazine, June/July 1986. Jack Terrell did not attend this meeting, but was briefed afterwards about it.

[468]Village Voice, December 30, 1986.

[469]"Obstruction at Justice," Village Voice, March 31, 1987. Posey was subsequently bailed out by Jack Terrell, a CMA field commander, and Jose Coutin, CMA's Miami representative. "Did Meese Block a Second Probe?", Village Voice, December 30, 1986; Transcript of NBC Nightly News Interview with Jack Terrell, May 21, 1986 (hereafter "Terrell NBC Transcript"), p. 32.

[470]Defendant Hector Cornillot was the manager of the Howard Johnson's in Miami. He was a supporter of the contras and gave a lower special "contra" rate to many of the Defendants and mercenaries who ere involved in the resupply effort. Owen Deposition, supra, 1988, p. 230.

by Hall and the division of the $1 million was discussed. Defendant Posey had previously reviewed the plan with Jesus Garcia.[471]

The plan was to place C-4 in a light box outside the embassy and detonate it. When Tambs ran out of the embassy, he would be shot. The group decided that five men would carry out the hit, including one Nicaraguan who would be killed immediately afterward and have papers planted on him that would link him to the Nicaraguan government.[472] Garcia refused to participate because he was not "willing to hit an American. It was too dangerous."[473]

Garcia described the plan as follows: "We were all to fly to San Jose, where we were to meet and be provided back-up by Mr. John Hull and Mr. Bruce Jones. This operation was being coordinated by Mr. Tom Posey of

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[471]Statement of Jesus Garcia given to Federal Public Defender, Southern District of Florida. It is unclear whether Defendant Posey was present at this meeting in Miami. According to Cockburn, it was Posey who showed Garcia the blueprint of the embassy and told him that C-4 explosives were being stored in a room upstairs. Cockburn, supra, p. 56. Terrell NBC Transcript, supra, p. 34.

[472]Terrell NBC Transcript, supra, p. 37.

[473]"The Dirty Dealing in the Underground Contra Aid Network," In These Times, December 10-16, 1986. "Jailed Contra Details Plans to Kill Tambs," Tempe State Press, November 19, 1987. Defendant Cornillot stated in the same article that the participants were drunk, and their discussion was not to be taken seriously. Id.

Decatur, Ala."[474] Garcia's statement was corroborated by Jack Terrell, a CMA commander also present at the meeting. According to a memorandum of an FBI interview of Terrell in 1986:

> Terrell told New Orleans FBI agent Charles Calhoun that an emissary from the Ochoa drug family met with Tom Posey, Jesus Garcia, Rene Corvo and Francisco Chanes in Miami in January or February 1985. Ochoa's representative offered the group one million dollars if they killed Ambassador Tambs.[475]

Jesus Garcia saw crates of supplies, which included C-4 plastic explosives, at the Howard Johnson. The C-4 was sent to Costa Rica via El Salvador.[476] The plan was postponed because Tambs did not leave Colombia when expected.[477] But the plotting continued in Costa Rica, and involved the CMA-Operation Pegasus mercenaries.

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[474]Statement of Jesus Garcia given to Federal Public Defender, Southern District of Florida. Cockburn, supra, p. 56.

[475]"Ollie North's Private Dick," Village Voice, September 29, 1987. Terrell confirmed the plot in an interview with NBC Nightly News based on information he had received from Thompson. Terrell NBC Transcript, supra, pp. 34-5.

[476]"Ollie North's Private Dick," Village Voice, September 29, 1987.

[477]Martha Honey, "Gunpowder, Treason & Plot," This Magazine, June/July 1986, pp. 12-14.

Robert Thompson, a mercenary who went to Costa Rica with a shipment of arms in March of 1985, admitted to Jack Terrell that he knew about the plot and described it in detail.[478] Peter Glibbery, a mercenary operating in contra camps near the Hull farm in March and April, 1985, recalled trying to take explosives to the camp from the farm of Defendant Jones and being told that it was needed "for the embassy job."[479]

The CMA mercenaries stayed in a camp near the Nicaraguan border with a group of contras, including one named David.[480] In late March a contra named David who operated from Defendant Hull's ranch and was to participate in the bombing plot, approached a Costa Rican restaurant owner named Carlos Rojas Chinchilla, told him about the bombing, and asked for help to escape.[481] David had been told that he would be killed after the

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[478]Terrell NBC Transcript, supra, p. 33-4.

[479]"Did Meese Block a Second Probe?", Village Voice, December 30, 1986.

[480]Testimony of Robert Thompson in Hull v. Avirgan and Honey, First Penal Court, San Jose, Costa Rica, May 22, 1986, reprinted in LaPenca: On Trial in Costa Rica, p. 64.

[481]Deposition of Carlos Rojas Chinchilla, November 5-7, 1987 (hereafter "Rojas Deposition"), pp. 34-49. William Crone, an American farmer who shares ownership of a farm with Defendant Hull, has subsequently testified in this litigation that a contra named "David" associated with Hull was encamped near Hull's Pocosol farm with a group of Cuban-Americans, which included Defendant Corvo. Crone Deposition, supra, pp. 233-236.

bombing, dressed in a Sandinista uniform and left with papers in his pocket that implicated the Sandinistas in the attack. Defendant Galil had been contracted to return and kill Tambs.[482] David told Rojas that Defendants Alvaro Cruz and Frederico Saenz were part of the assassination team.[483]

At approximately the same time, Fernando Cruz Castro, the chief prosecutor for the judicial branch of the Costa Rican government, received a visit from a North American. The North American told Cruz that he was training contras in southern Honduras, and that there were plans to bomb the American embassy in which he did not want to participate.[484]

Rojas subsequently informed the Plaintiffs who relayed the information to George Mitchell, the chief of security at the U.S. Embassy in San Jose in April of 1985. On July 17, 1985, David informed the Plaintiffs that Defendant Galil and a hit team were expected in Costa Rica within a few days. On July 18, 1985, the Reagan administration sent a warning to the Nicaraguan government that it had information about a "terrorist" attack against U.S. personnel in Honduras, which would result in serious consequences for the perpetrators.[485]

At just about the same time, Garcia was asked by Defendant Posey to kill the Russian ambassador to

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[482]Rojas Deposition, supra, p. 159.

[483]Rojas Deposition, supra, pp. 52, 148.

[484]Deposition of Fernando Cruz Castro, May 11, 1987 (hereafter "Cruz Deposition"), p. 9.

[485]"The Dirty Dealing in the Underground Contra Aid Network," In These Times, December 10-16, 1986.

Nicaragua. In late July, Garcia traveled to the Dominican Republic to await further instructions, but was called home by Posey.[486] Posey decided that Garcia was an informant who was passing on information about the assassination and bombing attempt. Posey and the others discussed luring Garcia to Central America and killing him there. On July 21, 1985, Garcia was invited to Honduras by Posey, but he was arrested in an apparent set-up for illegal possession of a machine gun before he made the trip.[487] The main witness against Garcia was "Major" Alan Saum, a close associate of Defendant Posey who had invited Garcia to go to Central America with him to blow up the Soviet and Cuban embassies.[488]

Kidnapping of Rojas

In July of 1985, because of his knowledge of the defendants' involvement in both the La Penca bombing and the attempt to assassinate Tambs, Rojas was kidnapped in San Jose, along with David, and taken to Defendant Hull's ranch by car. When the car stopped, the men driving asked for "Paniagua." When told that Paniagua was not there, they then asked for "Hull." When told that Defendant Hull also was not there, they asked that he be contacted by radio. After they were left with only one guard, Rojas and David escaped and returned to

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[486]"Jailed Contra Details Plans to Kill Tambs," Tempe State Press, November 19, 1987.

[487]Waas, "Stuck in Miami," New Republic, November 24, 1986.

[488]Waas, "Stuck in Miami," New Republic, November 24, 1986.

San Jose.[489]

Carlos never saw David again, and Plaintiffs later received information that David had been executed on Defendant Hull's ranch. Carlos, fearing for his life, fled Costa Rica on August 18.[490] On August 25, Defendant Owen reported to North that one of the contra leaders, Jose (Chepon) Robelo, cousin of UNO leader Alfonso Robelo, who operated near Hull's ranch had ordered the torture and execution of a Sandinista informant. El Negro Chamorro was to punish Robelo, although Chamorro threatened to resign if Chepon were forced out.[491]

Second Pegasus Invasion

In late January or early February 1985, immediately after the planning meetings in Miami, members of Operation Pegasus, led by Jack Terrell and Joe Adams (who took a brief leave as Defendant Calero's body guard) returned to Honduras to train with FDN and Miskito Indian forces and to launch the second Operation Pegasus invasion of Nicaragua. Fourteen Americans, including Terrell and Adams, were involved, eight of whom graduated from Frank Camper's mercenary school.[492] Terrell, Adams and the twelve other American volunteers

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[489]Rojas Deposition, supra, pp. 178-198.

[490]Rojas Deposition, supra, p. 296.

[491]Owen Congressional Testimony, supra, Exhibit RWO-9 (memo from "TC" [Owen] to "BG" [North], dated August 25, 1985; Owen Deposition, supra, pp. 555-56.

[492]"Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

selected by Posey, left Miami on a commercial flight to Tegucigalpa, Honduras. From there, they went to an abandoned Miskito base near Rus Rus.[493]

Defendant Posey put Terrell in charge of this mission,[494] which was to spearhead Operation Pegasus by establishing an armed base camp of 100-200 U.S. volunteers and 500 Miskito Indians inside northern Nicaragua by the summer of 1985. By the winter of 1985 the U.S. and Nicaragua would be in open war. Pegasus troops would be in Managua by Christmas. Adams claimed the plan was developed by Posey and Terrell.[495]

On February 26, 1985, Terrell and Adams led a group of 50 contras, including American mercenaries, on a mission to destroy a strategic bridge at Sinsin in Escala province of Nicaragua. Food was running low by time they reached the bridge and the terrain was different than expected. More importantly, it was discovered that the bridge was defended by several hundred more Nicaraguan government troops than expected. The attack was called off.[496] The men did, however, leave behind several hundred pounds of C-4 in a cache near the bridge. In approximately June of 1985, this C-4 was used to blow the

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[493]"14 Rambos Cracked Under Pressure," Baltimore Sun, January 4, 1987.

[494]"14 Rambos Cracked Under Pressure," Baltimore Sun, January 4, 1987.

[495]"14 Rambos Cracked Under Pressure," Baltimore Sun, January 4, 1987.

[496]"Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

bridge up at the direction of Sam Hall, who was brought in to replace Terrell.[497] Adams claimed that the team also set three percussion land mines in the public road and heard that at least one went off, killing more than 20 Sandinista soldiers.[498]

After returning to their base, the Americans were ordered out of the country.[499] On March 15, 1985, Terrell was surrounded by armed Honduran soldiers and escorted to a plane bound for Miami. Lt. Col. Oliver North later took credit for Terrell's expulsion from Honduras, claiming that he sent a message to Honduran officials to throw Terrell out of the country.[500] Approximately two days later, Sam Hall arrived in Honduras to take over the command from Terrell.[501]

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[497]Continued Deposition of Sam Hall, March 9, 1988 (hereafter Continued Hall Deposition"), pp. 47, 123.

[498]"Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

[499]"Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

[500]"North Waged War on Detractors," Chicago Tribune, August 30, 1987. Sam Hall, who at this time was preparing to go to Rus Rus to continue with the operation, testified that Terrell and his troops had to pull out of the Miskito camp because of their military foul-ups, calling it a "bad scene" and that they were ordered to pull out by Rob Owen. Hall Deposition, supra, at 55-56; Continued Hall Deposition, supra, p. 124.

[501]Continued Hall Deposition, supra, p. 118.

Conspiracy to Bomb Los Chiles

The defendants developed another plot to create an incident that would draw the United States into armed combat with the Nicaraguans involved the bombing of Los Chiles, a small town on the border of Costa Rica and Nicaragua. A plane was to be painted up in the "Sandinista configuration", which would then drop bombs on Los Chiles. Jack Terrell described it as a "continuous undercurrent of -- really terrorist activity to try to draw the United States Government into direct conflict with the Nicaraguans because they were to be made to look like they were committing overt acts against a neutral and unarmed country, Costa Rica."[502]

CMA on the Southern Front: The March 6, 1985, Shipment of Arms

On March 6, 1985, a group of Cuban exiles and mercenaries, including Jesus Garcia and Steven Carr, shipped six tons of automatic rifles, mortars and other weapons from a Fort Lauderdale airport to the Nicaraguan rebels.[503] Defendant Corvo was in charge of the logistics of the shipment.[504] The weapons included a 14-foot, .20-millimeter cannon with 150 rounds of ammunition, a crate of 30 - 50 G-3 automatic rifles, a crate of M-16 and M-60 machine guns, several .60-millimeter mortars with 80 to 100 rounds each, a .50-caliber machine gun with 250

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[502]Terrell NBC Transcript, supra, p. 38.

[503]The Chronology, supra, pp. 88-89.

[504]Cockburn, supra, p. 40.

rounds, a sniper rifle and a shotgun.[505] The weapons, along with three kilograms of cocaine, were stored at the homes of Defendant Chanes and a relative of Defendant Corvo's.[506] The sniper rifle and a shotgun were from Defendant Posey's personal collection. The weapons, approximately 4,500 pounds, were flown to Ilopango Air Force Base in El Salvador by Daniel Vasquez II, a Cuban-American twice convicted of running guns to Cuba in the late 1950s and early 1960s, and his son.[507] Carr, who stated that he was recruited by Defendant Jones,[508] stated that the plane, a Convair cargo plane, was owned by Tom Boy, the head of the Florida Air Transport Company. Boy confirmed that his plane made the flight, but said it was leased to American Flyers, a Fort Lauderdale air charter

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[505]"Did Meese Block a Second Probe?," Village Voice, December 30, 1986, citing federal law enforcement officials.

[506]"NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987; "Did Meese Block a Second Probe?", Village Voice, December 30, 1986.

[507]"Obstruction at Justice," Village Voice, March 31, 1987, citing FBI files; "Cuban Exiles Said to Ship Guns to Rebels," Miami Herald, July 21, 1985; "Did Meese Block a Second Probe?", Village Voice, December 30, 1986.

[508]Jones' description of the same event is that in January of 1985, Carr knocked on Jones' hotel door while Jones was in Miami attempting to drum up support for the contras. Jones said he talked to Carr several times and referred him to Defendant Corvo. Jones Deposition, supra, p. 43.

company headed by Vasquez. The cargo was not checked because Vasquez filed a manifest stating that the plane contained used clothing and medicine.[509] Persons on the flight included Carr, Defendant Corvo and Robert Thompson, another mercenary. Thompson confirmed Carr's story.[510]

After landing at Ilopango, the plane was unloaded, and the weapons were taken to a nearby warehouse. A few days later, they were reloaded on smaller planes and sent to Defendant Hull's ranch in Costa Rica.[511] Defendant Corvo told the FBI that he had informed Defendant Hull that there were guns in the boxes.[512] Defendant Owen was present during the unloading.[513] The weapons were later used in a raid against the Nicaraguan town of La Esperanza led by Defendant Corvo.[514]

Carr, Corvo and Thompson traveled to Costa Rica by

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[509]Carr stated that on March 3, 1985, a van load of uniforms, boots and medicines had been loaded on the same plane. "Cuban Exiles Said to Ship Guns to Rebels," Miami Herald, July 21, 1985.

[510]"Cuban Exiles Said to Ship Guns to Rebels," Miami Herald, July 21, 1985.

[511]"Obstruction at Justice," Village Voice, March 31, 1987, citing FBI files.

[512]Feldman Deposition, supra, p. 67.

[513]Owen Deposition, supra, pp. 107-8.

[514]"Obstruction at Justice," Village Voice, March 31, 1987, citing FBI files.

commercial plane on March 9, 1985.[515] When they arrived, they were met by Costa Rican authorities who took them to Hull's ranch and told them they "did not have anything to worry about here in Costa Rica because our government is giving full support."[516]

An FBI investigation confirmed the above illegal activities.[517] U.S. Customs Service records also showed that Defendant Corvo chartered a plane to carry cargo from Fort Lauderdale to the Ilopango military airfield in El Salvador on that date and again on June 19, 1985.[518]

Arrest of the Mercenaries

Peter Glibbery and John Davies were two British mercenaries who had the Recondo School, a paramilitary training operation run by Frank Camper in Alabama. In February of 1985, Camper introduced the two Englishmen

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[515]"Cuban Exiles Said to Ship Guns to Rebels," Miami Herald, June 21, 1985.

[516]Roberto Cruz Sandoval Deposition, May 8, 1987 p. 53. U.S. Customs Service records confirm that Defendant Corvo chartered a plane to carry cargo from Fort Lauderdale to the Ilopango military airfield in El Salvador on that date and again on June 19, 1985. "CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," The Wall Street Journal, Jan. 15, 1987.

[517]Feldman Deposition, supra, p. 67.

[518]"CIA Role in Arming Contras Seen Larger than White House Has Acknowledged," The Wall Street Journal, Jan. 15, 1987.

to Defendant Posey who recruited them into the CMA.[519] In early March, Posey sent Glibbery and Davies to Miami to meet John Hull. When they met Hull at the Miami Howard Johnson's, he was accompanied by Larry Huff, whom he described as a business associate, and Felipe Vidal. They were subsequently joined by a French mercenary, Claude Chauffard. The next morning, March 9, 1985, the mercenaries and Huff all flew to Costa Rica.[520] The mercenaries' travel expenses were partially paid for by Hull.

Glibbery, Carr, Claude Chauffard and John Davies went first to Hull's ranch at Muelle, and then to another one of his farms at Pocosol. They spent the night with Bill Crone, a co-owner of the Pocosol ranch.[521] The following morning, they went further north toward Nicaragua to set up a camp just inside Nicaragua. Defendant Corvo worked with them, but they also took direction from Defendant Hull, whom they described as

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[519]Cockburn, supra, p. 27. Kornbluh, supra, pp. 82-86. It was Sam Hall who a week later brought Glibbery and Davies from Camper's gun shop to Posey in Decatur, Alabama for "their marching orders." Cockburn, supra, p. 27.

[520]Cockburn, supra, p. 29. Chauffard had been sponsored by James Keyes through a $10,000 donation to CMA. Keyes is closely connected to Vice President George Bush. Id. Testimony of Peter Glibbery in Hull v. Avirgan and Honey, First Penal Court, San Jose, Costa Rica, May 22, 1986, reprinted in LaPenca: On Trial in Costa Rica (hereafter "Glibbery Testimony"), p. 36.

[521]Crone Deposition, supra, pp. 260-1.

their "boss".[522] Glibbery wrote reports on the state of training, proposed troop utilization for the FDN and sent messages to Hull asking for advice.[523] Glibbery, Chauffard and Davies spent Easter at Hull's beach house.[524] They worked very closely with the local Costa Rican authorities who, at one point, issued Costa Rican arm bands to the contras so that they could arrest a Sandinista lieutenant whose parents lived in Costa Rica.

Shortly thereafter, Defendant Corvo led Carr, Robert Thompson and approximately 20 contras on an attack of a Sandinista outpost known as La Esperanza. The Costa Rican Rural Guard did reconnaissance for the raid. Casualty reports varied, with between 30-70 soldiers and civilians reported killed.[525]

Glibbery, Carr, Davies, Thompson and Chauffard were arrested on April 25, 1985, by Costa Rican officials shortly after the La Esperanza raid. One of the weapons confiscated was a sniper rifle which the U.S. Bureau of Alcohol, Tobacco and Firearms traced to Defendant

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[522]ABC Interview with Steven Carr and Peter Glibbery, September 15, 1985; Glibbery Testimony, supra, p.33. Crone testified that he delivered a note from Glibbery to Hull shortly after their arrival in which Glibbery told Hull of problems in the camp and asked for advice. Crone Deposition, supra, pp. 257-265.

[523]ABC interview with Steven Carr and Peter Glibbery, September 15, 1985; Crone Deposition, supra, p. 263.

[524]ABC Interview with Steven Carr and Peter Glibbery, September 15, 1985.

[525]Cockburn, supra, pp. 43-44.

Posey.[526] Posey also hired a lawyer for the mercenaries.[527] After Carr and Glibbery began to talk to reporters about their operation, Hull and Jim Denby, an American associate of Hull's living in Costa Rica, made repeated visits to the prison to get them to recant their statements. Carr eventually agreed and signed a retraction, which he later told CBS was done "for a basket of food." Ultimately, all five were freed on bail when Hull posted their bond, believing that the gesture would silence them.[528]

Sam Hall and the Rainbow Mission

One of Defendant Posey's and Singlaub's other volunteers was Sam Hall. Hall was a mercenary who had been working with Navy Capt. William Hamilton, director of U.S. Navy special operations, and was attempting to establish the "Phoenix Battalion," a privately funded, covert group that would mount worldwide "preemptive strikes" against organizations it defined as "terrorist."[529] In

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[526]"Obstruction at Justice," Village Voice, March 31, 1987, citing FBI files. The Chronology, supra, at 88-89.

[527]"Alabama's CMA Troops Face Hard Time in Jungle," Birmingham News, June 13, 1985.

[528]Cockburn, supra, pp. 46-47. Bill Crone testified that Hull attempted to put up property which Hull did not own as collateral for the bail. Crone Deposition, supra, p. 270.

[529]Deposition of Sam Hall, September 9, 1987, pp. 227-267. Ross Perot was apparently solicited to fund this group. Id., p. 258. Capt. Hamilton is now retired and an executive with the ANV Corp., a Jupiter, Fla.-based firm

February 1985, Hall was contacted by one of the planners of the Phoenix Battalion, a member of the 2506 Brigade.[530] Hall was told by this individual to "get into Central America" and to do so by aligning himself with CMA and Defendant Posey, who put him in touch with Defendant Owen.[531] Owen sent Hall to Honduras on a "fact-finding" trip in March 1985 with Mario Calero.[532] Hall reported to an American in Tegucigalpa and then to Defendant Owen back in the United States.[533] In early April 1985, after his debriefing by Defendant Owen, Hall was sent back to Honduras to become the military adviser and trainer in the Rus Rus Miskito camp, replacing Jack Terrell.[534] Hall's expenses were paid by Defendant Singlaub's non-profit, tax-exempt U.S. Council for World Freedom.[535] Thus, Hall was working for Singlaub, Owen and their superiors, under the guise of CMA.[536]

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[530]Sam Hall, Counter-Terrorist, (Donald I. Fine, Inc., 1987), p. 263.

[531]Hall Deposition, supra, pp. 57, 116-117. Sam Hall, Counter-Terrorist, p. 263.

[532]Hall Deposition, supra, p. 62-68.

[533]Hall Deposition, supra, pp. 74-78.

[534]Hall Deposition, supra, pp. 78-80.

[535]Hall Deposition, supra, pp. 27-28. Hall stated that he operated out of the TEA commando camp, a 30-minute walk from the Rio Coco, in Honduras. Id., p. 51.

[536]Hall deposition, supra, p. 127. Owen informed Hall at one of the meetings the two had that Hall would be in Honduras as an agent for Defendant Singlaub. Continued

While working for Singlaub, Hall developed a plan for a large military action called the "Rainbow Mission," which involved the invasion of Nicaragua by Americans and contras and the control of the Atlantic Coast of Nicaragua by the Miskitos. He sent a draft to Owen who passed it on to Singlaub.[537] Hall requested 500 pounds of the explosive C-4, Claymore mines, grenades and ground-to-air missiles to carry it out.[538] Hall testified that he knew the contras were already in possession of large amounts of C-4, which was stored at a contra base near Tegucigalpa.[539]

In early May, Hall met Defendant Owen in Tegucigalpa, the second time he had met with Owen in Honduras, and provided him with a list of military supplies that Hall needed. While Owen provided Hall with fuel which was used to launch assaults across the border into Nicaragua, he could did not supply Hall with the most of the other supplies requested.[540]

In approximately mid-June of 1985, Hall was ordered by Defendant Owen to leave Honduras and come to Boulder, Colorado to meet with Defendant Singlaub to discuss the military operation in Honduras and Hall's

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Hall Deposition, supra, p. 33.

[537]Hall Deposition, supra, pp. 101, 195, 142.

[538]Hall Deposition, supra, pp. 101-105; Exhibit D-3 (undated memo entitled "Rainbow Mission."

[539]Hall Deposition, supra, pp. 289-91.

[540]Continued Hall Deposition, supra, 31-32, 42.

arrangement with Singlaub.[541] Before the meeting, Hall had two telephone conversations with Singlaub in which they discussed the implementation of the Rainbow Mission and the provision of military supplies. Defendant Singlaub approved the Rainbow Mission and told Hall, who earlier had difficulty getting military supplies, that things were going to change and that Hall would get what he needed. Singlaub did say that as far as the requested missiles were concerned, he may only be able to get those manufactured in France.[542] Once the Rainbow Mission was approved by Defendants Owen and Singlaub and Lt. Col. Oliver North,[543] Hall's requests for military supplies were given to Owen, who passed them on to Defendant Singlaub.[544]

In June of 1985, Hall left Honduras for Colorado for his face-to-face meeting with Defendant Singlaub. Tom Posey and Robert K. Brown were also present for this meeting,[545] during which Singlaub explicitly approved the

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[541]Hall Deposition, supra, p. 119-127. Other persons at the meeting included Robert K. Brown of Soldiers of Fortune magazine, Posey and a member of the Omega, Ltd., the parent company of Soldier of Fortune. Id., pp. 119-125. Continued Deposition of Robert Owen, February 28, 1988, p. 318.

[542]Continued Hall Deposition, supra, pp. 27-34, 42-43.

[543]Hall Deposition, supra, p. 144-145; Continued Owen Deposition, supra, 327; Continued Hall Deposition, supra, p 44.

[544]Continued Owen Deposition, supra, p. 336; Hall Deposition, supra, pp. 309, 356.

[545]Continued Hall Deposition, supra, Volume II, p. 58.

Rainbow Mission. Singlaub then directed Hall to an explosives expert for consultation on the plan. Approximately a week later, Hall met with this expert and refined some of the placements of explosives provided for in the planned mission.[546] Singlaub also devised a plan to steal a Soviet-made MI-24 or HIND D helicopter from Nicaragua which would require a non-American pilot. Singlaub wanted Hall to lead this mission.[547]

After the Colorado meeting, Hall returned to Honduras and was directed by Singlaub and Owen, to implement the Rainbow Mission.[548] Owen also put Hall in touch with Aristides Sanchez, a FDN associate of Defendant Calero's, to whom Hall proposed becoming the liaison between the FDN and the Miskitos.[549] Defendants Owen and Singlaub traveled to Honduras in late July and met with Hall.[550] On approximately August 1, 1985, Hall was directed by Singlaub to go to a secret supply base in Aguacate, Honduras where he was shown a large supply of military equipment that Singlaub had provided for the Rainbow Mission. It included 500 pounds of C-4, five French ground-to-air SAM 7-like missiles, grenades, mortars and all of the other equipment Hall had

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[546]Continued Hall Deposition, supra, 88-89.

[547]Continued Hall Deposition, supra, pp. 54-57.

[548]Hall Deposition, supra, p. 308-310. Hall was in fact paid expenses by Owen and Singlaub. Id.

[549]Owen Congressional Testimony, supra, pp. 431-2 and Exhibit ROW-19.

[550]Owen Congressional Testimony, supra, pp. 430-1 and Exhibit ROW-8 and ROW-18.

requested.[551] At least half of this equipment was then transported to a supply facility closer to Hall's base camp.[552]

During their trip, Singlaub and Owen met with Calero, the FDN and Miskito Indian groups. After that meeting, Defendant Owen transmitted a demand from the Indians that Hall leave the Rus Rus camp. Owen left $400 for Hall's flight home to the U.S. and later indicated that Defendant Singlaub had paid Hall $1,500.[553]

Contra Drug Connection

By 1981, the Costa Rican farm of Defendant John Hull was known as a refueling and storage place for international drug dealers transporting drugs from

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[551]Hall Deposition, supra, pp. 144-147, 321, 365, 395, 397, 406. Continued Hall Deposition, supra, 44-50, Volume II, p. 28, 32.

[552]Continued Hall Deposition, supra, Volume II, 33-36.

[553]Owen Congressional Testimony, supra, pp. 430-1 and Exhibits ROW-8 (letter dated August 7, 1985, from Owen ("TC") to North ("Steelhammer") and ROW-18 (letter dated August 7, 1985, to Hall). Owen had earlier put Hall in touch with an FDN leader named Aristides Sanchez to whom Hall proposed becoming the liaison between the FDN and the Miskitos. Hall also proposed his "Rainbow Mission" in which he would train and lead the Miskitos in controlling the East Coast of Nicaragua. Id., pp. 431-2 and Exhibit ROW-19. See, also, Hall Deposition, supra, pp. 144-147.

Colombia to the United States.[554]
Defendants Vidal and Corvo, who were both known to Miami authorities as drug traffickers, established a cocaine transshipment operation on Defendant Hull's farm that would coincide with the shipment of arms.[555] Hull was aware of this activity, as were other intelligence officials in Central America.[556]

Defendants Vidal and Corvo coordinated the landing of small planeloads of cocaine on Defendant Hull's farm and the numerous other ranches managed by Hull along the Costa Rican border with Nicaragua. The cocaine on

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[554]Morales Testimony, supra, p. 18. Morales, a drug trafficker, stated that "Colombian friends," who were always looking for places "to stash the merchandise, points for fuel stops," on the way from Colombia to the Bahamas, told him about Hull's ranch. Id.

[555]Deposition of Carlos Rojas Chinchilla, November 5, 1987, pp. 50-51. Testimony of Floyd Carlton Caceres before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications, February 10, 1988 (hereafter "Carlton Testimony"). Cockburn, supra, p.89.

[556]Jose Blandon testified that he was aware that the contra operations served as an infrastructure for various illegal activities, including drug running. Blandon identified the Corvo-Vidal network as being involved in the traffic of arms and drugs in Central America. Blandon Deposition, supra, p. 48. Sebastian Gonzales, another contra who was under the control of Defendant Hull was arrested in Costa Rica for smuggling cocaine. Blandon Congressional Testimony, supra, February 9, 1988.

these planes came from Defendants Ochoa and Escobar, two of the largest cocaine producers and traffickers in Colombia.[557] It was unloaded and then reloaded for shipment to Miami, New Orleans and Memphis on Defendant Hull's farm and the other farms he managed.

A portion of the income earned by Defendants Hull, Vidal, Corvo and others from drug trafficking was used to finance the purchase of military equipment, ammunition and explosives by the contras.[558] Ramon Milian-Rodriguez, a convicted drug money launderer for the Colombian Medellin cartel, testified before the Senate Foreign Relations Committee that the 2506 Brigade was involved in the drug trade, and that the proceeds from drug trafficking were being used to support the contras.[559]

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[557]Panamanian drug pilot Floyd Carlton Caceres has said that he had been told that a plane loaded with 538 kilos of cocaine worth $18.8 million and piloted by Teofilo Watson, Carlton's partner, had landed on Hull's ranch in May of 1985. Carlton Congressional Testimony, supra; Blandon Testimony, February 9, 1988, supra, "Drugs Spark Panama Manhunt," Miami Herald, November 3, 1985. Apparently the drugs were never found, and the Cali drug cartel kidnapped Hull's daughter in an attempt to get them back. Blandon Congressional Testimony, February 9, 1988.

[558] Rojas Deposition, supra, 50-51. Cockburn, Cockburn, 171-175. Eden Pastora later identified Colonel "Paniagua" as Defendant Vidal's protector. Deposition of Eden Pastora, supra, p. 20.

[559]Testimony of Ramon Milian Rodriguez before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications (hereafter "Milian Rodriguez Testimony"), February 11, 1988, pp. 87-

In June of 1983, Defendant Hull and Marcos Aguado, one of his pilots, made a mysterious trip to Colombia and then to Miami to visit with Jorge Morales, a known drug and arms trafficker, in his office. Defendant Hull and Aguado arrived in a Beechcraft T-55 later identified as a plane involved in drug trafficking. Hull was accompanied by Gustavo Velez, a "Colombian friend," Aguado and Gerardo Duran, another of his pilots. The ostensible purpose of the visit was to obtain the transport of contributed grenade launchers to El Salvador.[560]

But shortly thereafter, the Enterprise developed a much more direct link to Morales. In March of 1984, Morales, who had just been indicted for conspiracy to import and distribute cocaine, was contacted by Popo Chamorro, Pastora's supply officer, Octaviano Cesar, a Pastora associate, and Marcos Aguado. They represented

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91. Milian Rodriguez, who was associated with Dr. Manuel Artime and had earlier been assigned to launder support money for the families of the Cubans involved in the Watergate burglaries, met with Defendants Escobar and Ochoa and Carlos Lehder of the Medellin drug cartel in Colombia to discuss a safe haven for the cartel's profits, which ranged between $50-100 million per month. Milian Rodriguez reached an accord with then-Colonel Manuel Antonio Noriega, head of Army Intelligence in Panama, to deposit the money in Panama, with Noriega to receive one percent of the monies delivered. Id. at pp. 33-37.

[560]Deposition of George Morales before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications, pp. 83-94.

themselves as contra leaders working with the CIA.[561] Morales was asked for "airplanes, money, training, weapons, explosives, any type, any kind of help" in exchange for "taking care of" his legal problems. Morales agreed to help, and gave the contras a DC-4, a DC-3, a helicopter and a Piper Navajo.[562] The other arrangement made was that Morales would transport drugs from Central America for the contras and then use the money to buy supplies and weapons to be returned to the contras.[563] Morales personally witnessed the loading of weapons and the unloading of drugs. Some of them came from the Tamiami gun shop of Defendant Martin.[564] In return,

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[561]CBS was told by eight sources that Cesar works for the CIA. "NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987. Cockburn, supra, p. 169.

[562]Deposition of George Morales before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications (hereafter "Morales Congressional Deposition"),supra, pp. 29-33. Morales further testified that the DC-3 with the tail number "PaPa PaPa Delta Charlie" remains at Ilopango Air Force Base in El Salvador under the control of the CIA. Id., p. 56-7.

[563]Morales Congressional Deposition, supra, pp. 34-5 and 37 Morales further testified that he bought machine guns, automatic rifles, high-powered rifles, pistols and explosives to be shipped to the contras. At least once, he was personally at the airport in Fort Lauderdale when they were loaded. He also saw drugs being unloaded when the planes returned. Id., pp. 35-6.

[564]Morales Congressional Testimony, supra, p, 36.

Morales was assured that "high-level Washington people", including Vice President Bush, would keep him out of jail.[565]

In July of 1984, Morales took his first trip in which he transported munitions -- including M-16s, machine guns, C-4 and a cannon -- down to Costa Rica and drugs back for the contras. A second load followed shortly thereafter. Several other trips were made between July and October to transport marijuana between Colombia and the Bahamas. Contra pilots were trained by Morales to make the flights.[566] After a meeting on December 20, 1984, in Costa Rica with Popo Chamorro, Octaviano Cesar, Commandante Tito and Carol Prado, all contra leaders working with Eden Pastora, Morales received 160 kilos of cocaine for transport to the Bahamas and then on to Miami. Duran was the pilot for this load.[567] Shipments of cocaine continued until June 8, 1986. Morales sold the drugs and returned the proceeds to the contras.[568] Either Opa-locka Airport or Executive Airport in Fort Lauderdale were used to off-load the drug shipments.[569]

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[565]Cockburn, supra, p. 170.

[566]Morales Congressional Deposition, supra, pp. 77-9.

[567]Gerardo Duran, a contra pilot, flew this shipment of cocaine to Great Harbor in the Bahamas. It subsequently went to Miami. Another flight occurred on Dec. 27, 1985 (Costa Rica to Great Harbor) Morales Congressional Deposition, supra, p. 15-7.

[568]Morales Congressional Deposition, supra, p. 15.

[569]Morales Congressional Deposition, supra, pp. 14-16, 60, 74 and 78-99. Morales testified that he was the pilot on

Over $3 million in cash and other services, such as pilots and safe houses, went to the contras' offshore accounts from Morales. On October 13, 1984, Cesar went on a trip with Morales to the Bahamas to pick up $400,000 in cash from a local bank. Cesar filled out Customs forms declaring the money when he returned to the United States. Popo Chamorro also made a trip to the Bahamas and signed purchase papers for a Morales plane.[570]

Morales' pilots stated that they landed at Defendant Hull's ranch, unloaded, refueled, reloaded and returned back to the United States.[571] A Senate investigator has stated that "George Morales was close enough to Hull that he can describe the color of Hull's bedroom dresser."[572] Defendant Hull was paid up to $300,000 per flight.[573] "It was guns down, cocaine back," Gary Betzner, a pilot hired

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the first two or three flights. Id., p. 79. Morales gave a Cessna Titan 404, tail number N5273J to Popo Chamorro in 1985. Federal Aviation Administration record show that Chamorro tried to register this plane in the U.S. in May of 1985. "NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987, citing an interview with Morales.

[570]Cockburn, supra, p. 171.

[571]Morales Congressional Deposition, supra, p. 20-1.

[572]"NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987.

[573]Cockburn, supra, p. 172-3.

by Morales, said.[574] Betzner stated in an interview that he flew arms down to Hull's ranch and 1,000 kilos of cocaine back to the U.S. during a trip in 1984.[575] He was paid 20 kilos of cocaine per trip.[576] When he landed, "people that were hired by John Hull or working for him would load the aircraft. In both cases, John Hull was there." Betzner would land in broad daylight at Florida airports, the result of what he viewed as a CIA operation.[577] Morales estimated that the drug shipments from the contras were worth tens of millions of dollars.[578]

Law enforcement officials have confirmed that pilots working for the secret supply network were protected by certain persons at the CIA, who directed that their planes not be searched by Customs. Michael Palmer, a known drug smuggler, told one of his partners that he smuggled arms for the contras from Argentina to Honduras in cargo vessels and was protected in his Colombian dealings because he had a password that insured "a safe and

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[574]Doyle McManus and Ronald J. Ostrow, "Committee Probes Reports of Contra Drug Smuggling," Los Angeles Times, February 22, 1987.

[575]"NSC, CIA, and Drugs: The Contra Connection," Covert Action Intelligence Bulletin, Summer 1987.

[576]Cockburn, supra, p. 173.

[577]Cockburn supra, pp. 173-5.

[578]Morales Congressional Deposition, supra, p. 95.

undisturbed passage."[579]

By mid-1984, Defendant Jones was also receiving information that the contras were involved in narcotics trafficking.[580] Their lead pilot was Duran, who is now in prison in Costa Rica serving a sentence for drug trafficking. He was implicated in the escape of drug kingpin Rafael Caro Quintero from Mexican custody to Costa Rica.[581]

The contras also had another link to the powerful Medellin cartel. Between 1982 and 1985, the cartel contributed $10 million to the contra cause upon the request of Felix Rodriguez, who oversaw the contra resupply operation in El Salvador.[582] The money was passed by Milian-Rodriguez to couriers hand-picked by Rodriguez. Milian-Rodriguez, who was invited to President Reagan's inauguration, also met several times with Donald Gregg, Vice President George Bush's national

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[579]Affidavit of Alejandro Cerna Sanchez, dated January 27, 1988, filed in U.S. v. Cerna Sanchez (S.D. Texas); "Panel to Probe Alleged Contra-Drug Trade Links," Boston Globe, February 13, 1988.

[580]Jones Deposition, supra, pp. 182-3.

[581]Bill Crone, who is also a pilot, noticed that Duran's operation developed to the point that he was using the international airport. Crone Deposition, supra, p. 260-1.

[582]Rodriguez' other business was Giro Aviation Corp., where his partner was Gerald Latchinian, who was convicted for smuggling $10 million in cocaine into the United States to finance a coup against the president of Honduras. Cockburn, supra, pp. 155-6.

security adviser, and Rodriguez's old CIA boss.[583] The purpose of the contribution was to buy "goodwill."[584] Although a spread sheet of Milian-Rodriguez's financial accounts included a November 1982 entry for $3.69 million for the CIA, prosecutors never asked him a single question about it when he was convicted in 1985.[585] His testimony on this subject before the Senate Foreign Relations Subcommittee on Terrorism, Narcotics and International Communications has not yet been released.[586]

In late 1984, Felix Rodriguez asked Milian-Rodriguez for another favor: his assistance in laundering cash from some Miami companies to the contras. One of the companies was Ocean Hunter, a business run by Defendant Chanes. Milian-Rodriguez laundered approximately $200,000 a month through Ocean Hunter.[587]

There were other allegations of drug trafficking on Defendant Hull's ranch. Floyd Carlton Caceres, a convicted drug smuggler, alleged in his Congressional testimony that drug pilot Teofilo Watson went down with a load of drugs on John Hull's ranch in May of 1985. The drugs were never found. Jose Blandon testified that Hull's daughter was kidnaped by the owners of the drugs because

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[583]"Three Committees Track Down Smuggled Drugs, not Smoking Gun," In These Times, August 5 - 18, 1987; CBS, West 57th Street, July 11, 1987; Cockburn, supra, p. 154.

[584]Cockburn, supra, p. 155.

[585]Cockburn, supra, p. 153.

[586]Cockburn, supra, p. 155.

[587]Cockburn, supra, pp. 155-6.

they thought Hull had stolen them.[588]

Drug traffickers also played a role in the mining of the Nicaraguan harbors in 1983. Gary Betzner, a veteran drug pilot, picked up a DC-3 that had been confiscated from another drug dealer at Boca Chica Naval Station in Key West that was already loaded with six ship mines. He off-loaded the mines at the Ilopango military base in El Salvador. As part of the deal, he then went on to Rio Hacha on the north coast of Colombia and picked up 6,000 pounds of marijuana.[589]

In early 1985, Jack Terrell saw eleven contras carrying approximately 25 kilos of cocaine in Honduras.[590] During that same period, Defendant Owen was meeting frequently with contra leaders from the southern front to discuss military logistics and strategy. At least one of those meetings (March 29-30) was held in Washington, D.C., at which representatives of Negro Chamorro's group and another camp run by "the Cubans" were present. After that meeting, Defendant Owen identified Jose Robelo ("Chepon"), head of Chamorro's group, and Sebastian Gonzalez ("Wachan") are being involved in drug running. Others were stated to be making money on the side from the sale of U.S. goods.[591]

The Tolliver Drug Runs to Honduras

In late July or early August of 1985, Michael Tolliver, an American pilot finishing up a prison term in a halfway

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[588]Blandon Deposition, supra, p. 35.

[589]Cockburn, supra, p. 173.

[590]Terrell NBC Transcript, supra, p. 22.

[591]Owen's Congressional Testimony, supra, Exhibit RWO-7.

house in Georgia, was contacted by Barry Seal, a drug trafficker who was known for his ties to the CIA,[592] and asked to meet with people about working in a covert operation. Tolliver subsequently met with a man who identified himself as Eduardo Hernandez.[593] Tolliver later identified Hernandez as "Max Gomez," an enterprise associate whose real name is Felix Rodriguez.[594] In the first week of August, "Hernandez" took Tolliver to Tegucigalpa, Honduras, to meet with "his man," Wayne Westover (a/k/a George Wilson), a liaison for the contras

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[592]Deposition of Michael Tolliver in Midland National Bank v. Conlogue and American Aircraft et al., Case No. 83-1707K (D. Kansas), November 18, 1987 (hereafter "Tolliver Kansas Deposition"), p. 282; Cockburn, supra, at 180. Defendant Quintero later told Tolliver that Seal was one of the recruiters for crews and an integral part of obtaining people to fly military aid into Honduras. Tolliver Kansas Deposition, supra, p. 282.

[593]Deposition of Michael Tolliver, March 10, 1987 (hereafter "Tolliver Deposition"), p. 4. Hernandez's assistant in Miami was Miguel Perez. Id., p. 8. Based upon his conversations with Perez, Tolliver believed Perez to be working for Defendant Theodore Shackley. Id., supra, pp. 50-1.

[594]Tolliver Deposition, supra, p. 11. Tolliver Kansas Deposition, supra, pp. 282 and 425. Transcript of Immunity Proceeding, November 30, 1987, in Midland Bank et al. v. Conlogue and American Aircraft et al., Case No. 83-1707K (D.Kan.) (hereafter "Tolliver Immunity Proceeding"), p. 11.

in Honduras.[595] Westover then introduced Tolliver to Jose Ferrer, the man who would become Tolliver's liaison officer in Honduras.[596]

Ferrer told Tolliver that the job required flying aircraft loaded with military supplies into Honduras, that he would be protected, and that his "bonus" was to "get to sort of be an entrepreneur" himself on the return trip. Tolliver was told he would be paid $75,000 per trip, and the aircraft and crew would be furnished.[597] In December of 1985, Tolliver was introduced to Defendant Quintero, who was identified as "Hernandez's" boss, who assured him again that "everything would be taken care of on my return and that there was complete protection for us while we were in Honduras and there was complete protection coming back if we indeed decided to make use of their information."[598]

In January, "Hernandez" contacted Tolliver again and asked him to go to Quito, Ecuador, to meet with Defendant Quintero.[599] Quintero told Tolliver that he should have nothing more to do with Seal, but take all of

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[595]Kansas Deposition at 287.

[596]Deposition of Michael Tolliver, March 10, 1987 (hereafter "Tolliver Deposition"), pp. 1-7 and 9; Tolliver Kansas Deposition, supra, p. 284.

[597]Tolliver Deposition, supra, pp. 7-9.

[598]Tolliver Deposition, supra, p. 12.

[599]Because of weather problems, Tolliver landed in Guayaquil, and Defendant Quintero met him there. Tolliver Deposition, supra, p. 16.

his directions from the people in Miami.[600]

In March of 1986, "Hernandez" contacted Tolliver again and told him to come to Miami International Airport, where a loaded DC-6 and a crew was waiting. Tolliver then flew to Aguacate in Honduras, where 28,500 pounds of military supplies were unloaded.[601] The plane was then loaded with 25,360 pounds of marijuana, which Tolliver flew back to Homestead Air Force Base in South Florida as arranged. When he landed, Tolliver was met by a blue pickup truck, which took him out of the base.[602] The next day, Tolliver met Hernandez at the Fountainbleau Hotel where he was paid $75,000 in cash for the transshipment of arms to Honduras.[603] Hernandez also promised Tolliver that he would be paid $150,000 for the return shipment of drugs. However, Hernandez never made this payment.[604]

In July of 1986, Hernandez contacted Tolliver for a second trip for the Enterprise. Tolliver flew a DC-3

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[600]Cockburn, supra, p. 182. This was one month before Seal was murdered in New Orleans on orders of the Colombian cocaine cartel. Id. Tolliver verified the accuracy of pages 179-188 of Cockburn. Tolliver Kansas Deposition at 325-326.

[601]Tolliver Deposition, supra, pp. 21-3.

[602]Immunity Proceeding at 10-11; Kansas Deposition at 17-18. Cockburn, pp. 182-183.

[603]Tolliver Deposition, pp. 27-28; Immunity Transcript at 11; Kansas Deposition at 265, 424.

[604]Tolliver Deposition, supra, pp. 27-8. Tolliver Kansas Deposition, pp. 264 and 446-447.

loaded with about 6,000 pounds of ammunition from Port-au-Prince, Haiti, to Aguacate. By filing a flight indicating that he was going to another area of Haiti, he avoided having to file his plan in Miami.[605] On the return trip, Tolliver flew to Colombia where drugs were loaded, and then to the Bahamas to off-load, and finally back to Haiti.[606] Tolliver received $20-30,000 for this flight.[607] Tolliver also admitted to landing planes on John Hull's ranch.[608]

By 1984, after the La Penca bombing, CIA and U.S. embassy sources in Costa Rica were beginning to accuse the contras operating near Defendant Hull's property of drug trafficking.[609] No action was taken, however, despite other warnings. In 1986, after Gerardo Duran, a contra pilot working for George Morales, was arrested for transporting cocaine to the United States, the allegations of drug trafficking reached George Shultz, the Secretary of State. After Shultz talked personally with Pastora and

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[605]Tolliver Deposition, supra, pp. 30-34.Morales is alleged to have set up Haiti as a major transshipment point.

[606]Tolliver Kansas Deposition, supra, p. 448.

[607]Tolliver Kansas Deposition, supra, p. 460.

[608]Tolliver Kansas Deposition supra, p. 407.

[609]Prado Deposition, supra, p.39-40. Prado stated that Armando, an official CIA contact for the contras, was one of the persons accusing the contras of drug trafficking. Id. William Crone, Defendant Hull's business partner, also testified on Oct. 30, 1987, that he had been told to stay away from "certain people" because they were trafficking in narcotics.

"reiterated the U.S. position that no resistance group would receive any U.S. assistance if it retained within its ranks any member who has engaged in drug trafficking," the issue was not raised again.[610]

In the summer of 1986, Defendant Vidal was arrested by the Costa Rican Rural Guard with arms and drugs and "escaped" back to Florida.[611] He later returned to Costa Rica.

The Tolliver Kansas Case

In Midland National Bank, et al. v. Conlogue and American Aircraft et al., a civil case involving Michael Tolliver presently before Hon. Patrick F. Kelly, U.S. District Court for the District of Kansas, allegations of American pilots running arms and ammunition to the contras and returning to the United States with narcotics were substantiated. In that case, it is alleged that in late 1982, an undercover agent of U.S. Customs leased a plane, claiming that it would be used in an undercover operation. On approximately January 3, 1983, the pilot, Michael Tolliver, returning from Colombia with a plane loaded with marijuana, crashed off the coast of the Grand Cayman Islands.[612]

At the plaintiffs' request, Tolliver was called for a deposition in Kansas. Tolliver, who is currently serving time at the Federal Corrections Institute in Butner, North Carolina, took the Fifth Amendment to key questions

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[610]Undated State Department Report entitled "Allegations of Drug Trafficking and the Nicaraguan Democratic Resistance."

[611]Cockburn, supra, p. 236.

[612]Tolliver Immunity Proceeding, supra, p. 2.

whereupon Judge Kelly "put in place a proceeding following plaintiff's counsel's request that the Attorney General extend to Mr. Toliver immunities with regard to his testimony."[613]

After immunity was granted, Tolliver confirmed his activities in the guns-for-drugs operation described above.[614] Judge Kelly stated: "[I] find it to be incredulous, but, more than that, if true, is deserving of the fullest form of inquiry to ascertain if it is true."[615] The judge continued: "I have found...that there's some credence to your claim, which is to say that in a covert way the United States does acquiesce in the sale of drugs on the open American market and which is intended in part to fund covert activities in Central America..."[616]

Judge Kelly stated that he read the Affidavit of Daniel P. Sheehan, filed in this case on December 12, 1986 and that "The sum of the contents of Mr. Sheehan's affidavit is alarming to say the least. It identifies and describes the most evil and sinister form of conduct I can imagine...Simply said, if Mr. Sheehan proves just half of what he claims, in time there will be many arrests and prosecutions of a goodly number of people, some of whom presently serve in very high places in this government. ."[617]

Judge Kelly then stated that he would send the

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[613]Tolliver Immunity Proceeding, at 3.

[614]Tolliver Immunity Proceeding, at 3-5.

[615]Tolliver Immunity Proceeding, supra, p. 12.

[616]Tolliver Immunity Proceeding, supra, p. 12.

[617]Tolliver Immunity Proceeding, supra, p. 15.

Tolliver deposition and transcript of the immunity proceeding to President Reagan, CIA Director Webster and FBI Director Sessions,[618] and stated in sum: "[I] am certain in time full disclosures will be made to the American people and, if you will, the one reason I would do any of this is because it is in the public's interest that the truth is to surface."[619]

January 1984: Obtaining Private Funding for the Contras

Lt. Col. Oliver North of the NSC was the White House liaison to the CIA on the contra issue. In early 1984, North -- with others, including William Casey -- began to develop a plan to continue the contras' military effort to overthrow the government of Nicaragua despite an approaching congressional ban on such aid.[620] The plan included the solicitation of funds from other countries and private citizens, some under false pretenses; falsification of documents; perjury before Congressional committees; and the development of a vast "off-the-shelf" covert operation that was self-sustaining and accountable only to the Enterprise. North was to act as the "liaison" to the off-the-shelf operation for the men inside the

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[618]Tolliver Immunity Proceeding, supra, p. 17-18.

[619]Tolliver Immunity Proceeding, supra, p. 19.

[620]The second Boland Amendment to the Defense Appropriations Act, which prohibited all assistance to the contras by any defense or intelligence agency of the U.S. government was approved by the U.S. House of Representatives in August of 1984 and effective from October 12, 1984 to October 18, 1986. Iran-Contra Congressional Report, supra, p. 41. Its passage had been anticipated for some time prior to the action.

Reagan administration who, in their private capacity, participated in these illegal operations. The initial task was to raise enough money to continue contra military operations.[621]

By February of 1984, North wrote McFarlane explaining that without additional funds the program would be drastically curtailed. North proposed immediate efforts to obtain additional funding of $10-15 million from foreign or domestic sources. McFarlane asked Israel to become the sole funder of the contras, but Israel declined. As a result, on March 27, he met with Casey and proposed another plan to approach third countries. McFarlane then directed Howard J. Teicher, the NSC's director of Near East affairs, to approach Israel a second time. Israel again declined to participate.[622]

Earlier, in January of 1984, South Africa expressed its willingness to provide contra aid during a meeting between a South African official and Casey. In April, Duane (Dewey) Clarridge traveled to South Africa to follow up on the offer. During his April visit the mining of the Nicaraguan harbors became public, and CIA deputy director John N. McMahon directed Clarridge to postpone

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[621]Iran-Contra Congressional Report, supra, pp. 36-8; Miami Herald, December 7, 1986.

[622]When confronted by Secretary of State George Shultz about the approach to Israel, McFarlane denied that he had directed it. Testimony of George Shultz, Joint Hearings on the Iran-Contra Investigation, July 23, 1987 (hereafter "Shultz Congressional Testimony"), pp. 13-4; Iran-Contra Congressional Report, supra, pp. 36-8.

South African contra aid.[623]

The funds for the secret network eventually came from Saudi Arabia, which was approached by an associate of Defendant Secord; NSC Director Robert McFarlane; and the CIA's Chuck Cogan, a personal friend of Prince Bandar's. Saudi Arabia's contribution was a quid pro quo for military equipment without restrictions on its use, specifically 400 Stinger missiles. On Memorial Day, President Reagan invoked emergency procedures to bypass Congressional restrictions. McFarlane then obtained the number of a contra bank account in the Cayman Islands from North and, on June 22, gave the number to Prince Bandar.[624] On June 27, Prince Bandar went to Geneva with an $8 million check which he directed the Swiss Bank Corporation to disburse to the Cayman Islands account at the rate of $1 million a month.[625] The first $1 million

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[623]Iran-Contra Congressional Report, supra, p. 38, citing Testimony of Duane Clarridge, Joint Hearings on the Iran-Contra Investigation, August 4, 1987 (hereafter "Clarridge Congressional Testimony"), pp. 29-33. Clarridge and the CIA continued to attempts to obtain aid from the South Africans. Eden Pastora testified that a CIA Costa Rican operative, Daniel Pacheco, arranged a meeting in San Jose in the fall of 1984 between Pastora and representatives of the South African security forces. Pastora stated that no assistance was received from the South Africans. Pastora Deposition, supra, pp. 102-4.

[624]FDN bank statements; New York Times, March 6, 1987; Wall Street Journal, March 6, 1987 Bob Woodward, Veil: The Secret Wars of the CIA, New York, Simon & Schuster, 1987 (hereafter "Woodward"), pp. 351-5.

[625]Woodward, supra, pp. 351-5.

contribution was deposited in the account in July of 1984.[626]

These steps were taken despite serious opposition and orders directing North, Casey and McFarlane not to take such action. On June 25, at a meeting of the National Security Planning Group attended by President Reagan, Vice President George Bush, Secretaries Shultz and Weinberger, Presidential Counsel Edwin Meese, CIA Director Casey, and McFarlane, McFarlane proposed that the President seek third-country funding. Chief of Staff James Baker opposed the plan, calling it an "impeachable offense." Although everyone agreed that they would do nothing without an opinion from then-Attorney General William French Smith, on that very same day, North arranged for the transfer of funds from Saudi Arabia. Aware of the illegality of his acts, North issued a series of instructions to Defendant Calero: "never let agency know of amt, source, or even availability" of the funds; "No one in our govt. can be aware"; and "Your organization must not be aware."[627]

On June 26, at a meeting with Casey, Attorney General Smith said that the United States could "discuss" support for the contras with other countries if it were clear that the United States would not repay their commitment and that the CIA's congressional oversight committees were informed. The congressional committees were not informed of North's and McFarlane's actions

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[626]FDN bank statements; New York Times, March 6, 1987; Wall Street Journal, March 6, 1987.

[627]Iran-Contra Congressional Report, supra, p. 39.

until 1987.[628]

Fall 1984: Another Search for Private Funds

In the fall of 1984, the contras were again running out of funds. After an initial contact requesting continued funding to Saudi Arabia by McFarlane, North asked Defendant Secord to make a follow-up contact. Secord did so, and the ambassador said that he was going to "take it up with the head of state." In February of 1985, King Fahd of Saudi Arabia agreed to contribute an additional $24 million.[629] Secord took the credit for this contribution,[630] which was sent directly to Defendant Calero's bank accounts.[631]

Defendant Singlaub, with the approval of Defendant Calero and North, also began soliciting military assistance, including bullets, guns and air defense missiles, for the contras from South Korea and Taiwan in 1984 in meetings at their embassies in Washington, D.C.[632] In January of 1985, Singlaub visited senior government officials in those

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[628]Iran-Contra Congressional Report, supra, pp. 38-40; FDN bank statements; New York Times, March 6, 1987; Wall Street Journal, March 6, 1987.

[629]Iran-Contra Congressional Report, supra, p. 45.

[630]Calero Congressional Testimony, supra, p. 19.

[631]Iran-Contra Congressional Report, supra, p. 45.

[632]Singlaub Congressional Testimony, supra, Exhibit JKS-8 (memo dated December 4, 1984, from North to McFarlane in which it is reported that Singlaub offers to arrange meetings with Calero and makes proposals based upon agreements with Calero).

countries, outlined the contras' military needs, repeated his solicitations for military supplies, and proposed three alternative means of funneling the money to the contras: (1) deposit money directly into a foreign bank account for which there would be no accountability; (2) give Defendant Singlaub an instrument that he could deposit in a foreign bank account; or (3) use money from a commission ostensibly designated for a vendor of arms for other purposes. The countries' representatives were given a 3x5 card with the name and number of the bank account on it, which Defendant Singlaub had been given earlier by North.[633] Defendant Singlaub stated that he was acting solely as a private citizen In late 1985, North met directly with a representative from Taiwan, which then made a contribution of $2 million for "humanitarian" assistance. The money, however, was placed directly into the Enterprise's Lake Resources Swiss Bank account to be used for lethal aid.[634]

In the period from July 1984 to March 1985, Defendant Calero received a total of $32 million. He received monthly $1 million deposits until February of 1985 when he received two deposits of $5 million and $4 million, respectively. In March, Defendant Calero received two deposits of $7.5 million each. After March, no additional funds were deposited in that account[635], and the Enterprise removed the day-to-day control of funds from Calero. Defendant Secord took credit for raising the $24

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[633]Singlaub Congressional Testimony, supra, pp. 194-201.

[634]Iran-Contra Congressional Report, supra, pp. 44-5 and 63.

[635]Calero Congressional Testimony, supra, pp. 20-3 and 53-4 and Exhibits AC-2 and AC-6.

million that was funneled to the contras in February and March of 1985, and for much of the other funds.[636]

The Enterprise Approaches the Medellin Drug Cartel for Funds

Another source of funds for the contras was the powerful Medellin drug cartel in Colombia. Between 1982 and 1985, upon the request of Felix Rodriguez, who was working with the contras and their supply effort in El Salvador and Honduras, the cartel contributed $10 million to couriers handpicked by Rodriguez.[637]

In its continuing search for funds, the Enterprise made another valuable contact through Defendant Hull and the contras on the southern front. As discussed above, it approached George Morales, an indicted drug trafficker in Miami with a proposal to train contra pilots to fly arms down to Central America and drugs back. Morales would get a personal profit and obtain assistance with his legal problems. Under this arrangement, Morales' contra pilots made numerous flights between 1984 and 1986 and imported tens of millions of dollars of drugs into the United States for the benefit of the Enterprise. Refueling

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[636]Calero Congressional Testimony, supra, p. 18-9. In September of 1986, during a meeting with Defendant Owen, Defendant Secord said he had met with Prince Bandar of Saudi Arabia "before King Fahd came to visit the President" (what's that date?), and that Saudi Arabia had provided $15 million to the contras because of that meeting. Owen Congressional Testimony, supra, p. 361.

[637]"Three Committees Track Down Smuggled Drugs, not Smoking Gun," In These Times, August 5 - 18, 1987; CBS, West 57th Street, July 11, 1987; Cockburn, supra, p. 154.

often occurred on Defendant Hull's airstrips.[638]

Defendant Owen: Covering for the Enterprise

During this same period, North and other members of the Enterprise also began to establish the infrastructure required to manage the contras' supply and military operations against Nicaragua. To hide their roles from the press, the public and government law enforcement officials, North and Defendant Hull and Calero solicited Defendant Owen in 1983 to become part of the Enterprise. Owen had met North and Hull in mid-1983. Hull, a native of Indiana, met and became friendly with Owen, at that time a staff assistant to Senator Dan Quayle of Indiana, when Hull made a visit to Quayle's office to lobby against Pastora and for additional contra aid. Owen, according to his testimony before the Iran-Contra Select Committees, introduced Hull to various Administration officials including North.[639] Shortly thereafter, Owen, still a Congressional staffer, visited Hull's ranch. His airfare was paid by Hull and William Crone.[640] During the trip, Owen visited Pastora as part of his "fact-finding" mission to

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[638]Cockburn, supra, pp. 168-75.

[639]Owen Congressional Testimony, supra, pp. 325-6.

[640]Owen's Congressional Testimony, supra, p. 329. Owen said the payment for this trip was cleared by the Senate Ethics Committee. Id. On October 30, 1987, William Crone, an American sawmill operator and business partner of Defendant Hull, in testimony before the Senate Foreign Relations subcommittees on economic policy and narcotics, terrorism and international operations, stated that he paid for half of Owen's trip. See, also, Crone Deposition, supra, p. 191.

determine if Pastora was still sympathetic to the Sandinistas.[641] Owen and North also had several meetings that summer to discuss the contras. By November of 1983, Hull and Owen were corresponding and referring to North as "B.G." [Blood and Guts], a code name used by North over the next three years of the Enterprise's operations.[642]

In November of 1983, Defendant Owen went to work for Gray & Co., a Washington, D.C.-based public relations firm with close ties to the U.S. intelligence community and the White House.[643] In April of 1984, Defendant Calero asked Gray & Co. for representation for the contras. Although the firm was not comfortable with representing the contras, Defendant Owen used his position to draft various aid schemes for Calero. These included using a nonprofit organization in the U.S. to raise funds for "non-lethal" aid and relying on proprietary companies overseas to purchase weapons.[644] Both of them were subsequently implemented by the Enterprise and resulted in indictments for Defendants Hakim and Secord and North and

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[641]Crone Deposition, supra, p. 193.

[642]Iran-Contra Congressional Report, supra, p. 36.

[643]Testimony of Robert Owen, Joint Hearings on the Iran-Contra Investigation, May 14, 1987, p.325. Owen's direct supervisor was Neil Livingstone, who is also president of the Institute on Terrorism and Subnational Conflict. The Institute was later used by the enterprise to funnel tax-exempt funds to pay the salary of Defendant Owen. Poindexter et al. Indictment, supra, para. 34.

[644]Owen Congressional Testimony, supra, p. 326.

Poindexter.[645] In the spring of 1984, while still a Gray & Co. employee, Defendant Owen assumed the crucial role for the Enterprise of obtaining and transmitting information about the financial and military needs of the contras to North and other members of the Enterprise who wanted to remain covert.

In May of 1984, Defendant Owen traveled to Costa Rica and Honduras to obtain information for the Enterprise. At that time, the contras stated that they needed $1 million a month to maintain the status quo and $1.5 million if they were to grow. Owen's job was to evaluate that request.[646] Over the next several months, Owen made other trips to Central America and also to various locations in the United States. In August of 1984, Defendants Calero, Owen and Singlaub met several times with Col. North at the Republican National Convention in Dallas to discuss providing military and non-military aid to the contras.[647]

In addition, Owen began to raise funds. In July of 1984, while the first Boland amendment was in effect, Defendant Owen made contact with an individual representing South Africa [Country Six] to obtain what he code-named "toys", but were actually arms for the contras.[648] Owen, like other members of the Enterprise, was already aware that other countries often demanded

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[645]Poindexter et al. Indictment, supra.

[646]Owen's Congressional Testimony, p. 326-7.

[647]Owen Congressional Testimony, supra, p. 330.

[648]Owen's Congressional Testimony, pp. 328-9 and Exhibit RWO-1 (letter dated July 2, 1984, from Rob Owen to Oliver North).

favors in return for their assistance. After his meeting, he wrote to North:

> He believes it can be done, but as you suspected there probably will be some quid pro quo. It may only be assurances that come December or January certain equipment could be purchased from here or possibly even from a third country. He does not speak for the party in question but does have an idea what they might want.[649]

Owen returned to Central America in October of 1984. Before he left, North gave him classified government photographs and maps which Owen delivered to Defendant Calero in Tegucigalpa for a proposed contra military operation.[650] He also met in Costa Rica with Defendants Calero and Hull at which time he agreed to leave Gray & Co. and work with Defendant Calero to "do whatever I could to assist him in the coming months before the U.S. Government decided to give funding back to the Contras." He was to receive $2,500 a month and expenses from Calero. Later, the Enterprise found way to pay Owen from government funds. During the same trip, Calero agreed to give Hull $10,000 a month to provide assistance to the southern front.[651] This money replaced earlier CIA pay-offs to Hull for his support of the contras.

Between late 1984 and early 1985, Defendant Owen

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[649]Owen Congressional Testimony, supra, Exhibit RWO-1 (letter from Owen to North, dated July 2, 1984.

[650]Owen provided maps to the contras on at least three occasions in late 1984 and 1985. Owen Congressional Testimony, supra, p. 363.

[651]Owen's Congressional Testimony, supra, p. 330-2

participated in at least half a dozen meetings with top contra officials and others in Miami to discuss the military and financial needs of the contras. Defendant Hull was present at some of the meetings,[652] as were Defendants Calero and Posey and Jack Terrell, a mercenary who was overall chief of the northern front operation. Other meetings took place in Houston, Costa Rica and Honduras.[653] Owen became the main channel of communication between the contras and North and various members of the Enterprise.

The Enterprise Establishes a Public Fund-raising Front

By January of 1984, Defendant Singlaub was meeting with Defendant Calero to assist the contras by providing them with former military advisers private funds he helped raise.[654] Meanwhile, Singlaub was already providing similar assistance to neighboring El Salvador, where Congress had limited the number of U.S. military advisers allowed to serve there to 55.[655] But Singlaub's most visible role in this venture of the Enterprise was to act as a highly visible "lightning rod" to detract the attention of the press from the much more significant fund-raising activities of

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[652]"Ex-State Dept. Consultant Called Key Link to Contras," Baltimore Sun, December 28, 1986. The need to protect Hull's farm was also discussed. Id.

[653]"Ex-State Dept. Consultant Called Key Link to Contras," Baltimore Sun, December 28, 1986.

[654]Singlaub Congressional Testimony, supra, pp. 186-7.

[655]Deposition of John K. Singlaub, March 7-8, 1988 (hereafter "Singlaub Deposition"), pp. 252-3.

McFarlane, North, Secord and Calero.[656] By June of 1985, reporters were close to establishing a link between contra support and NSC staff members. But North and Singlaub had already begun to implement their plan to divert press attention away from the NSC by presenting Singlaub as the main fund-raiser for the contras. As a front man for the private contra aid network, Singlaub was a natural choice. He was the highly vocal head of the United States Council on World Freedom ("USCWF"), the United States chapter of the World Anti-Communist League ("WACL").

To cover the actual operations of the Enterprise, Defendant Singlaub courted the press. In the months following his meeting with North, he was featured in virtually all of the major newspapers as the main contra fund-raiser. Singlaub publicly stated in early 1986 that he had raised millions of dollars of private humanitarian aid, and that he did so as a "surrogate" for government officials. Meanwhile, Defendant Calero contributed to this press diversion by mentioning that he had received $25 million in aid from an unnamed source. Singlaub represented himself as the person who had "stepped in" to replace North as the liaison with the political and military leadership of the contras and was widely viewed as having kept the contras alive.[657] In actuality, as Singlaub testified

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[656]Iran-Contra Congressional Report, supra, p. 48, citing testimony of Oliver North. Singlaub also attempted to obtain arms contracts from the contras for his friend Barbara Studley. Except for one $5.3 million deal, he was unsuccessful. See discussion, infra.

[657]Transcript of "Who's Running This War?," PBS Frontline, March 18, 1986, p. .9; Iran-Contra Congressional Report, supra, p. 121; "Private Groups Step Up Aid to the

before the Iran-Contra Congressional committees, he raised less than $1 million.[658] But, as that "surrogate," he also solicited funds for military aid from American citizens in violation of the U.S. Neutrality Act.[659]

Defendant Singlaub played a more serious role in the covert fund-raising effort. In late November of 1984, North approved his efforts to solicit funds for "bullets, guns and anti-aircraft missiles" for the contras from Taiwan and South Korea, where Singlaub had made high-level contacts during his military career. Calero also solicited funds from Taiwan.[660]

Defendant Owen was the courier for Col. North, delivering the Enterprise's Swiss bank account number to a representative of Taiwan in Washington in the summer or fall or 1985.[661] Earlier, Gaston Sigur, Assistant Secretary of State for East Asia and Pacific Affairs, had told this official that arrangements for transmitting $1 million a month to the contras would be forthcoming.[662] In late 1985, Taiwan contributed $2 million.[663]

Contras," Washington Post, May 3, 1985.

[658]Singlaub Congressional Testimony, supra, p. 190.

[659]Transcript of "Frontline: Who's Running This War?" PBS, March 18, 1986, pp. 16-7.

[660]Calero Congressional Testimony, supra, p. 164.

[661]Owen Congressional Testimony, supra, p. 352.

[662]Testimony of Gaston Sigur, Joint Hearings on Iran-Contra Investigation, May 14, 1987 (hereafter "Sigur Testimony", p. 291.

[663]Iran-Contra Congressional Report, supra, p. 45.

The Enterprise's Supply Operation

In addition to raising money, the Enterprise needed to establish a system for the delivery of supplies and operational support to the contras. The operation encompassed the illegal provision of intelligence, the construction and use of air fields in foreign countries under false pretenses, the training and hiring of mercenaries, the implementation of military operations, and the use of falsified documents.

To implement the off-the-shelf operation, North turned to the Enterprise, including Defendants Shackley, Clines, Hakim and Secord, for reactivation of its military supply operations to the contras. Defendant Quintero would again be the supply officer. As of approximately March of 1984, the Enterprise would be directing the supply of military equipment to the contras in Honduras and through Defendant Hull's ranch in Costa Rica. Between March 1984 and May 1984 that the Enterprise supplied the C-4 explosive used to bomb the May 30, 1984 press conference of Eden Pastora at which Plaintiff Tony Avirgan and others were injured and several other people were killed.

In early 1984, North and Casey met several times to discuss the creation of the contra support infrastructure. According to North, Casey suggested Defendant Secord as a "person who had a background in covert operations... and was a man who, by Director Casey's definition, got things done, and who had been poorly treated." Based on those conversations, North approached Secord and asked him to become involved in supplying the contras. As had been earlier proposed to North by Defendant Owen, Secord was to establish private commercial entities for that purpose. According to North, it was to be a private, "self-sustaining operation" so there would "always be something there which you could reach out and grab when you needed it. Director Casey said he wanted something you

could pull off the shelf and use at a moment's notice."[664] The criteria for the companies relayed to Defendant Secord was that the operations be "revenue producers," "self-sustaining," and provide "fair, just, reasonable compensation" to those involved.[665] North asked for, and was given, Calero's bank account number which was subsequently given to Defendants Singlaub and Secord.[666]

Over the life of this venture, the Enterprise developed a plan to use the excess funds obtained by large mark-ups on arms sales to the Iranians not only for the contra activities, but for other illegal covert operations as determined by Casey, North and the Enterprise.[667] Secord developed a "layout" to demonstrate how commercial entities could be used to support such activities.[668] North later described Secord as "the boss of the organizations and the commercial Enterprises that he set up to assist the Nicaraguan resistance" and responsible for the details.[669]

At the time of this approach from North, Secord was in partnership with Defendant Albert A. Hakim in a company called Stanford Technology Trading Group

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[664]Iran-Contra Congressional Report, supra, p. 40.

[665]North Congressional Testimony, July 10, 1987, supra, p. 156.

[666]Calero Congressional Testimony, supra, pp. 18-19.

[667]North Congressional Testimony, supra, July 13, 1987, pp. 44 and 154.

[668]North Congressional Testimony, supra, July 8, 1987 (afternoon), p. 5.

[669]North Congressional Testimony, July 7, 1987, supra, p. 209.

International. Hakim was the chairman of the board and Secord was the president.[670] They were an unlikely pair to trust with highly secret operations. Secord had already been denied a security clearance by the CIA because of his involvement with Edwin Wilson, and Hakim was under investigation by the CIA and the FBI. Earlier, during the 1970s, Hakim had been forced to leave the U.S. as an "undesirable alien."[671] In 1980, the CIA told its San Francisco agent to avoid Hakim because of his past association with Frank Terpil and Edwin Wilson and because of the "FBI's suspicions of illegal activity on the part of the Stanford Technology Corporation." Hakim became a U.S. citizen only after Casey granted him "hip-pocket citizenship" in 1983.[672]

In May of 1984, the CIA began to investigate Hakim and Stanford for connections with Iranian terrorists. It sent a secret cable to the FBI stating, "This Agency has reason to believe that Hakim's company may be associated with Iranian terrorist-support activities being run out of

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[670]Secord and Hakim's business was described as "international security," and they were equal shareholders. Defendant Secord had met Hakim in 1976-7, when Secord was chief of the Air Force mission in Iran, and Hakim was doing business with the Iranian Air Force. Secord Congressional Testimony, supra, p. 47; Poindexter et al. Indictment, supra, paras. 11-2.

[671]Wheaton Deposition, p. 381.

[672]Wheaton Deposition, supra, p. 381; According to Wheaton, the CIA director has the authority to bypass the normal immigration process and grant citizenship to 100 non-citizens per year for "national security and intelligence purposes." Id.

official Iranian installations in Vienna and Barcelona." In March of 1986, the investigations were still underway and unresolved.[673]

Secord's Purchase of Arms

Secord's assignment was to buy weapons for the contras with the money from Saudi Arabia. Defendants Calero and Secord met in the summer of 1984 in a meeting arranged by North.[674] Secord told Calero that Secord could raise funds for the contras from foreign sources, specifically friends in the Middle East who might donate between $13 million and $25 million.[675]

In a second meeting, Defendant Secord brought along Defendant Quintero, whom Secord had met through Defendant Clines. They put together a renewed munitions

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[673]Emerson, Secret Warriors: Inside the Covert Military Operations of the Reagan Era, Putman, 1988 (hereafter "Emerson"), pp. 218-9.

[674]Secord Congressional Testimony, supra, p. 49.

[675]Calero Congressional Testimony, supra, pp. 18-9. Defendant Secord had been the deputy assistant secretary of Defense for the Middle East, Africa, and Southern Asia and had been instrumental in obtaining the sale of AWACS radar planes to the Saudi Arabians. Secord Congressional Testimony, supra, pp. 47-8. As part of that deal, the Saudis put millions of dollars into CIA bank accounts in Switzerland for the contras, the Afghan rebels and other groups. Kornbluh, supra, citing The San Antonio Light, July 27, 1986, and The New York Times, Feb. 4, 1987.

supply operation for the contras.[676] Defendant Calero gave Defendant Secord a list of arms which Secord gave to a Canadian arms dealer, Transworld Armaments, for pricing. The deal for arms was made in November of 1984 with the profit split among Secord, Hakim and the arms dealer.[677] Defendant Secord described his role in the operation as deciding how money would be spent, and Defendant Hakim as the one who implemented the decisions.

Transworld Armaments handled two transactions for Defendant Secord -- a small shipload of munitions from the Far East and a plane load of approximately 90,000 pounds of arms from Europe -- but later arms procurement was done by Defendant Clines.[678] Included in these shipments were rifles, bullets, hand grenades, mortars, C-4 explosives, fuses, detonators, and SA-7 missile launchers.[679]

Defendant Clines obtained arms from Eastern bloc and Western countries through Defex, a Portuguese arms dealer. In January of 1985, Richard Gadd was hired to make the arrangements for the airlift of arms from Portugal to Central America through Southern Air Transport. Gadd, a retired Air Force colonel who specialized in covert operations, had met Secord during the Iran hostage rescue attempt in 1980. Gadd had been part

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[676]Secord Congressional Testimony, supra, pp.49-50.

[677]Secord Congressional Testimony, supra, pp. 51-2.

[678]Secord Congressional Testimony, supra, p. 52.

[679]Secord Congressional Testimony, supra, Exhibit 2 ("FDN Expenditures and Outlays, July 1984 through February 1985").

of the ill-fated plan of the Department of Defense to establish a "black" operations covert supply operation and had attempted to bring Secord into that operation (see discussion, above). He had several companies: Sumarico, American National Management, Eagle Aviation Services and Technology and Airmach. He also rented office space in Virginia to Secord. Secord claimed to be a consultant to the White House and the Defense Department and, according to Gadd, backed up his claims with knowledge of Gadd's classified activities. Gadd arranged for a charter by Southern Air Transport (SAT), which paid him a commission in the name of East, Inc. Gadd handled five or six shipments, some of which SAT subcontracted to Arrow Air.[680]

On May 11, loaded with arms for the contras from Poland and Portugal and false end-user certificates from Guatemala, the ship Erria left Portugal, ostensibly for Guatemala. Three weeks later, it docked in Puerto Cortez, Honduras, where its cargo was unloaded by the contras.[681]

The information about the type of arms the contras needed came from Defendant Calero via Defendant Owen. In February of 1985, Owen went to Central America carrying a letter from Col. North for Calero. The letter indicated that Defendant Calero would soon receive a deposit of $20 million "in the usual account", and that Defendant Owen would then set up a resupply operation for the contra troops. Owen brought back to North from Calero a list of weapons Calero wanted for his FDN

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[680]Testimony of Richard B. Gadd, Joint Hearings on the Iran-Contra Investigation, May 1, 1987 (hereafter "Gadd Congressional Testimony"), pp. 5-8.

[681]Los Angeles Times, January 21, 1987.

troops with the understanding that North would find someone to supply the weapons.[682] During May of 1985, Defendants Secord and Clines arranged another arms transfer to the contras. This one came by boat.[683]

Defendant Quintero coordinated the delivery of weapons in Central America and was the liaison with the contras and local authorities.[684] Defendant Calero paid Energy Resources, a Panamanian company with a Vienna, Va. address which was purchased in 1978 by Defendant Hakim's Stanford Technology Corp., for the arms.[685] The profit on Defendant Clines' deals was divided between Defendants Clines, Hakim and Secord, and increased when Transworld was dropped in favor of Defex.[686] The Secord-Clines-Hakim-Quintero supply operation soon became the dominant procurer and supplier of arms to the contras.[687]

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[682]Owen Congressional Testimony, supra, pp.334-7 and 342 and Exhibits RWO-3 (undated letter from Oliver North ("Steelhammer") to Adolfo Calero) and RWO-6 (Owen's handwritten list of weapons). Owen's code name was "T.C." (The Courier). Id., p. 335.

[683]Iran-Contra Congressional Report, supra, p. 50.

[684]Newsweek, "The Secret Warriors Tell Their Story," February 9, 1987, pp. 26-8.

[685]Secord Congressional Testimony, supra, p. 54.

[686]Secord Congressional Testimony, supra, pp. 53-4. Defendant Quintero received $3,000 per month plus a bonus for each arrival for his work. Id., p. 54.

[687]Kornbluh, supra, p. 69.

The Singlaub-GeoMiliTech Arms Sale

In early 1984, Barbara Studley, a friend of Defendant Singlaub's, formed GeoMiliTech Consultants Corporation, a military armaments company. She asked Defendant Singlaub to be a consultant, along with General Gordon Sumner (ret.), General Robert Kingston (ret.), Edward Luttwak of the Georgetown Center for Strategic and International Studies, and Joe Churba, a director of the Center for International Security. Singlaub, who had been supplying military advisers to the government of El Salvador, initially referred the Salvadorans to GeoMiliTech to purchase weapons.[688]

In March of 1985, Defendant Singlaub traveled to FDN camps in Central America and met with Defendant Calero, FDN chief Enrique Bermudez and other FDN leaders to develop a list of small arms, ammunition and air defense and ground missiles needed by the contras. The list was reviewed with Col. North in April, and the air defense missiles were deleted. Defendants Singlaub, representing GeoMiliTech, and Defendant Calero subsequently met with an arms dealer.[689]

In a later meeting in Col. North's office at which Defendants Singlaub, Secord and Calero were present, it was agreed that Defendant Secord would supply the air defense missiles for $180,000 each and provide trainers for the contras, even though Defendant Singlaub had offered a price of $165,000.[690] In that meeting or a subsequent

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[688]Singlaub Deposition, supra, p. 45-9.

[689]Singlaub Congressional Testimony, supra, pp. 202-11 and Exhibit JKS-1 (Singlaub's list of weapons) and Exhibit JKS-2 (list with Defendant Calero's approval).

[690]Singlaub Congressional Testimony, supra, pp. 212-4.

one, Secord requested that the ship used to deliver the GMT arms to the contras be diverted to another country to pick up some he had purchased "that were hung up there."[691]

In June of 1985, Defendant Owen met with Defendant Singlaub and several people from the magazine Soldier of Fortune, including its publisher, Robert K. Brown, in Tabernash, Colorado to review the arms package. Defendant Owen then flew to San Francisco to meet with Defendant Calero to verify the precise quantities and types of weapons that Defendant Calero wanted. Defendant Calero's approval was then transmitted in code by Defendant Owen to Defendant Singlaub.[692]

Defendant Singlaub subsequently procured $5.3 million in Eastern-bloc arms which left for Central America on June 20, 1985, through GeoMiliTech.[693] Defendant Calero agreed to transfer funds to an account in Switzerland designated by the arms dealer.[694] The ship arrived in the designated port on July 8, 1985, and was consigned to a military official of that country. That official was represented by Defendant Mario Dell Amico, who met the ship.[695]

The Martin-McCoy-Dell Amico Arms Sale

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[691]Singlaub Congressional Testimony, supra, pp.215-6.

[692]Owen Congressional Testimony, supra, pp. 343-6.

[693]Singlaub Congressional Testimony, supra, pp. 168-9.

[694]Singlaub Congressional Testimony, supra, pp. 221-2 and 230.

[695]Singlaub Congressional Testimony, supra, pp. 223-4.

In 1984-5, Defendant Calero and the FDN also purchased about $2 million in arms through a network operated by Defendants Ronald Joseph Martin, James McCoy and Mario Dell Amico. Martin was associated with Gretch World and the Tamiami Gun Shops in Miami. McCoy was a former defense attache at the U.S. embassy in Managua when Somoza was overthrown in 1979, and knew Calero since about 1977. Dell Amico was their representative in Honduras.[696] On January 31, their Miami-based company, R.M. Equipment, filed two false end-user certificates with the Portuguese National Defense Industry requesting approval of weapons purchases. The certificates were from the Honduran Armed Forces Joint General Staff and were signed by Col. Julio Perez, who identified himself as "engineer, in charge of the C-4 Logistics Division." On May 16, R.M. Equipment filed two more false end-user certificates signed by Perez with Portuguese authorities, but this time they were addressed to a Portuguese import-export company named Atomex, whose owners were Joac Martins and Costa Corvo. These certificates were signed by Cesar Augusto Caceres Rojas, Guatemala's Army chief of staff who was paid $25,000 each for the certificates.[697] The arms were transported aboard the freighters Erria on May 11 and Peder Most in June to the Honduran port of Puerto Cortez from which they were transferred to contra bases.[698]

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[696]Calero Congressional Testimony, supra, pp. 29-31; New York Times, March 6, 1987.

[697]Emerson, supra, p. 221.

[698]Lisbon Expresso, February 7, 1987; UPI, February 7, 1987.

Fraudulent End User Certificates

Defendants Martin, McCoy and Dell Amico were not the only ones to use fraudulent end-user certificates. Because very few countries would allow the shipment of arms directly to an unrecognized guerilla force, the Enterprise often required fraudulent end user certificates. To conceal sales from the Portuguese government, Defendants Secord, Hakim, Clines and Calero conspired to obtained and did submit fraudulent end-user certificates representing over $8 million in sales for both the Transworld and the Defex deals to the Portuguese Arms Directorate. They requested the approval of the sale of various weapons to Guatemala.[699] Obtaining these fraudulent end user certificates required the efforts of Oliver North and Defendant Calero, who met in January of 1985 separately with the head of Guatemala and the U.S. ambassador to Guatemala. In early February, Defendant Secord also met with North concerning the certificates. By February 14, the fraudulent certificates were procured and provided to the government of Portugal to obtain the illegal release of arms for the contras. Shortly thereafter, 90,000 pounds of East European

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[699]Testimony of Robert C. McFarlane, Joint Hearings on Iran-Contra Investigation, May 11, 12 and 14, 1987 (hereafter "Mcfarlane Congressional Testimony"), Exhibit RCM-35 (memo dated March 5, 1985, from Col. North to McFarlane). North attached to this memo nine end user certificates for Energy Resources from Guatemala covering $8 million in arms shipments. Id. Earlier, Transworld Armaments of Canada had given the Portuguese three false end user certificates to cover contra arms which certified that the Guatemalan Army was the end user. Kornbluh, supra, citing CBS Evening News, Jan. 8, 1987.

munitions for the contras were sent to Guatemala.[700]

In return for "extraordinary assistance" in providing end user certificates, North recommended that Guatemala be granted additional "security assistance." Guatemala had already provided North with a "wish list" of armaments it wanted.[701]

Defendant Secord also attempted to use fraudulent end-user certificates for a purchase of Chinese weapons. By the end of 1984, he had located 30 ground-to-air missiles, launchers and related items for sale in China. However, the purchase, which was arranged through a Canadian arms dealer, was being blocked because of the country named as the end user. After being alerted by Defendant Secord of this difficulty, Oliver North and Gaston Sigur, a consultant to the NSC and former NSC director of Asia affairs, met with China's defense attache. They advised the attache of the contras as the real end user and promised that Defendant Calero would recognize China when the FDN had succeeded in overthrowing the Nicaraguan government. China eventually sold the missiles to the contras.[702]

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[700]Iran-Contra Congressional Report, supra, p. 43, citing North entries dated January 29, January 30 and February 5, 1985, in his notebook and RCM Exhibit 35, supra.

[701]Iran-Contra Congressional Report, supra, p. 46, citing Exhibit RCM 35, North memorandum to McFarlane, dated March 5, 1985, entitled "Aid to the Nicaraguan Resistance.")

[702]Iran-Contra Congressional Report, supra, p. 42, citing Exhibit RCM-32 (memorandum from Oliver North to Robert McFarlane, dated December 4, 1984, entitled "Assistance for the Nicaraguan Resistance").

In 1986, Felix Rodriguez was requested by Defendant Quintero to obtain a fraudulent end user certificate from an official in El Salvador for British blow-pipe missiles that the Enterprise hoped to obtain from another Latin American country. The certificate, which showed El Salvador as the end user, was made out to Lake Resources, another Hakim-Secord company in Panama. Rodriguez obtained the certificate from his "friends" and gave it to Defendant Secord, but the Enterprise was not able to obtain the missiles. Rodriguez requested the return of the certificate several times, but never received it. Rodriguez later described his concerns as follows: "I lied to those people, and they have proof. . . "[703]

Tabulation of Arms Purchases by the FDN

Congressional investigators traced a total of $33.6 million which passed through Calero's bank accounts. Of that amount, $32 million was received from Saudi Arabia; $200,000 was received from Lake Resources, a company controlled by Defendants Secord and Hakim; $1,045,000 from Intel Corporation, Carl Channell's Cayman Islands corporation (see discussion, below); $248,000 in interest; and $417,000 from unidentified sources. By January of 1987, all of it except $96,000 had been spent. Approximately $19 million had been spent on arms of which $2.1 million went to Gretch World/R & M Equipment (Defendants McCoy and Martin); $5.3 million to GeomiliTech (Defendant Singlaub); $11.4 million to Energy Resources (Defendants Secord and Hakim) and $432,545 for other arms purchases through Defendant Secord. Approximately $670,000 went to other contra groups, apparently including $10,000 a month that went

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[703]Rodriguez Congressional Testimony, supra, pp. 252-3 and p. 42-3 (May 28, 1987).

from Defendant Calero to Defendant Hull.[704]

Use of FDN Funds by North and Owen for Their Personal Benefit

Although the funds went directly to Defendant Calero's account for the benefit of the FDN, Defendant Calero provided Oliver North in excess of $90,000 in blank traveler's checks between February and August of 1985. Defendant Calero believed the money was to be used to support efforts to obtain the release of American citizens held hostage in Lebanon and for contra-related expenses.[705] On the first occasion, Defendant Calero gave North $15,000 or $25,000 drawn on a Cayman Islands bank, and there were four subsequent "gifts".[706]

Congressional investigators subsequently traced the use of a portion of the $90,000 in traveler's checks given to North as follows: $25,000 were cashed by agents of the Drug Enforcement Agency or their associates, presumably for the hostage release plan; $2,440 were cashed by North; $1,000 went to Defendant Owen as a wedding gift.[707]

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[704]Calero Congressional Testimony, supra, pp. 23-7 and 53-4 and Exhibits AC-1 and AC-2; Owen Congressional Testimony, supra, p. 409.

[705]North testified that he had anywhere from $150,000 to $175,000 in cash or traveler's checks in an "operational account" at all times. North Congressional Testimony, supra, July 8, 1987, p. 132.

[706]Calero Congressional Testimony, supra, p.48-50.

[707]Calero Congressional Testimony, supra, pp. 51-2 and 55-6 and Exhibit AC-6; Owen Congressional Testimony, supra, p.369.

However, the special prosecutor named to investigate the Iran-contra affair alleged that approximately $4,300 was used for North's personal benefit, a crime for which he was indicted.[708]

North also used other blank traveler's checks and the approximately $75,000 he obtained in cash from Defendant Secord for other purposes, including payment of other contra leaders. In the spring of 1985, Defendant Owen began making cash payments of thousands of dollars to "somewhere between six and 10" contra leaders.[709] He and Jonathan Miller, a State Department employee, received traveler's checks from North, cashed them and turned the dollars over to the designated contra leaders, including Brooklyn Rivera, a Miskito Indian leader who was negotiating at the time with the Nicaraguan government. Rivera was promised additional funds and help in uniting the Indian contra movement if he walked out of those negotiations.[710] In April, Defendant Owen obtained traveler's checks from North to pay another Miskito Indian leader who was visiting in Washington at the time.[711] Peter Flaherty, a conservative Republican attempting to raise funds for the contras, was present during the April transfer of funds.[712] Arturo Cruz Sr., one of the UNO

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[708]Poindexter et al. Indictments, supra, Count 22, p. 89.

[709]Owen Congressional Testimony, supra, p. 348.

[710]Owen Congressional Testimony, supra, pp. 337-41. Owen made a trip to Central America on March 20-24, 1985, to pay the Miskito leader. Id., p. 341.

[711]Owen Congressional Testimony, supra, p. 341-2.

[712]Owen Congressional Testimony, pp. 342-2 and 348.

leaders, was also paid out of the account. North kept a ledger reporting the use of the money, but testified that he destroyed it at the direction of CIA Director Casey. Defendant Owen was frequently the courier used to obtain and take the funds to the other contra leaders.[713]

Avoiding Bank Transaction Reporting Laws

On September 16, 1985, Defendant Owen was asked to go to New York by Defendant Secord, who was using the name "Mr. Copp," and meet with someone. In New York, Owen met the man in Chinatown, who delivered a "wad" of $9,500 in $100 bills to Owen. Owen then returned to Washington, D.C., and delivered the cash to Defendant Secord. Defendant Secord told Defendant Owen that the amount selected was under $10,000 so the transaction would not have to be reported to by the bank supplying the funds. Defendant Owen made two additional trips to New York to pick up cash for Defendant Secord, but delivered the funds to North, instead of Secord.[714]

Use of U.S. Banks to Transmit Funds to the FDN

At least $1.8 million of the lethal aid funds raised for the contras passed through the United States bank account of Aquilles Marin, a money broker who then converted the funds into local currency to deliver to the FDN forces. Another $1.8 million was handled in the same manner by Eric Lacayo.[715]

The Enterprise Takes Direct Control of FDN Funds

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[713]Iran-Contra Congressional Report, supra, pp. 46-7.

[714]Owen Congressional Testimony, supra, pp. 353-5.

[715]Calero Congressional Testimony, supra, pp. 36-7.

In early July of 1985, North held a meeting in Miami at which Defendants Calero, Secord, Clines and Quintero and Enrique Bermudez, the FDN military commander, were present. North expressed his concern that the FDN was squandering the funds that had been donated to it. As a result, the Enterprise took away control of the funds from the FDN and decided to furnish supplies directly to the contras in the field. Immediately after the meeting, Defendant Hakim set up the Lake Resource bank account in Switzerland. All subsequent donated funds went to Lake Resources and were under the direct control of the Enterprise.[716]

North called the revised operation Project Democracy. Its task was to expand their fledgling supply operation from simply delivering arms to the Ilopango and Aguacate bases in El Salvador and Honduras, respectively, to directly supplying the contras fighting near or inside Nicaragua. Secord asked Gadd to develop the necessary logistical organization consisting of aircraft, spare parts, maintenance, communications and trained personnel. Defendant Quintero selected Ilopango as the home base for the aircraft.[717] Felix Rodriguez, a veteran CIA operative with close ties to the Enterprise who had been working with both the contra supply operation and the Salvadoran Air Force, obtained service space at Ilopango, in part by using North's name.[718] North immediately asked the new U.S. ambassador to Costa Rica, Lewis Tambs, to help open the southern front and to obtain a

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[716]Iran-Contra Congressional Report, supra, pp. 51 and 60.

[717]Iran-Contra Congressional Report, supra, p. 61.

[718]Iran-Contra Congressional Report, supra, p. 62.

supply depot for the contras in Costa Rica.[719]

Defendant Secord told Gadd that Gadd would be able to profit from the air supply operation, but asked him to keep the operation secret to protect the White House and Secord.[720] Gadd hired Edward DeGaray for the operation to protect the identity of Defendant Secord and the government. DeGaray was president of Corporate Air Services, an air charter company.[721] Gadd also contacted William Langton, president of Southern Air, and asked him to acquire Amalgamated Consolidated Enterprises, a Panamanian shell company, that would be used to hold title to the aircraft. Southern Air and Gadd divided ownership of Amalgamated.[722]

Defendant Secord and Gadd agreed that the C-123 was the best plane for the operation and sought to buy three C-123s from the Venezuelan Air Force. When Venezuela refused to sell the airplanes without U.S. government approval North, Assistant Secretary of State for Inter-American Affairs Elliott Abrams and Vince Cannistraro, a former CIA agent then at the NSC, intervened to assure Venezuela that it was appropriate to sell the planes to Amalgamated Commercial Enterprises.[723] In a letter signed by Langton of Southern Air, the Enterprise falsely

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[719]Iran-Contra Congressional Report, supra, p. 61-2.

[720]Gadd Congressional Testimony, supra, pp. 12-4.

[721]The Chronology, supra, p. 503.

[722]Gadd Congressional Testimony, supra, pp. 14-9 and Exhibit RBG-2.

[723]Secord Congressional Testimony, supra, pp. 60-63; North Congressional Testimony, supra, July 14, 1987, p. 94.

represented to Venezuela that the planes would be used for a "U.S. Government [sic] sponsored relief airlift in Central America."[724] Nevertheless, Venezuela still refused to sell the planes.[725] With funds donated to the FDN, the Enterprise eventually obtained two C-7 Caribous,[726] two C-123s[727] and several Maule airplanes which had the ability to take off and land in as little as 125 feet.[728] At least one of the planes was purchased through CSF Investment Ltd., a subsidiary of Compagnie de Services Fiduciaries,

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[724]Gadd Congressional Testimony, supra, Exhibit, Letter from William Langton to General Victor A. Arriaga Ascanio, dated November 13, 1985.

[725]Iran-Contra Congressional Report, supra, p. 62-3.

[726]In January of 1986, Southern Air Transport purchased a C-7 Caribou for the humanitarian and military resupply operation. The title to the plane was held by the Defendant Secord's Udall Corporation. Plans for its use were discussed by Defendants Secord and Clines, Gadd and North at a meeting in a McLean, Va., restaurant. Gadd Deposition, supra, pp. 26-9.

[727] On March 28, 1986, a cashier's check for $475,000 signed by Udall Research Corporation is made payable to Harry Doan of Doan Helicopter for a C-123K is drawn from account number 47363801 at the Sun Bank in Daytona Beach, Florida. Chronology, supra, p. 321-2.

[728]Secord Congressional Testimony, supra, Exhibit 4. In 1986, the U.S. Customs Service was determining whether the Maules should be classified as "instruments of war" and require approval by the State Department for export. "Air Contra," Newsweek, November 17, 1986.

one of Defendant Hakim's companies.[729] Gadd recruited flight crews, and made arrangements with Southern Air Transport that it would do all aircraft maintenance.[730]

Day-to-day supervision of the operation fell to Robert Dutton, an associate of Secord's, who was hired in May of 1986.[731] Some of the pilots, mechanics and "kickers", such as Eugene Hasenfus,[732] working out of Ilopango Air Force base in El Salvador or Aguacate were ostensibly hired by Corporate Air Services, although their expense money came from Southern Air Transport with receipts returned to Dutton. From April to October of 1986, at least 25 missions were flown into Nicaragua to deliver arms to the contras.[733]

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[729]Transcript, CBS Evening News, July 14, 1986. The day after the interview with Maule Air, the company received a telephone call from someone they refused to identify warning it that it could be forced out of business if it did not retract everything told to CBS News. Id.

[730]Iran-Contra Congressional Report, supra, p. 65.

[731]Secord Congressional Testimony, supra, pp. 63-4.

[732]Both Hasenfus and William Cooper flew missions for the CIA-owned Air America during the Vietnam War. Parry and Barger,
"Reagan's Shadow CIA," New Republic, November 24, 1986.

[733]These pilots included Bill Cooper and Buz Sawyer, who died in Nicaragua on Oct. 5, 1986, when their plane was shot down; John McRainey; Frank Hines; Jerry Stemwedel; Jake Wherell; John Piowaty; Elmo Baker; and David Johnson (identify). Their contact at CAS was Ed de

John F. Piowaty, one of the pilots operating from Aguacate, indicated that he was recruited by Amalgamated Commercial Enterprises, commonly known as "Contra Air." According to Piowaty and Soldier of Fortune magazine, William J. Cooper, a former Air America pilot, was the Central American ground commander for ACE. The chain of command went from Cooper to Robert Dutton, Richard Gadd and finally to Richard Secord. Piowaty described the airplanes as "two worn-out C-123Ks, two ancient and nearly warn-out C-7A Caribous and an inappropriate single-engine Maule" which came with "such necessities" as reliable radar and navigation systems. Piowaty said that Dutton denied the crews parachutes because they were "too expensive."[734]

Flight crew members, who thought they were working for some part of the U.S. government, signed official-looking secrecy agreements in which they acknowledged that they could be prosecuted if they disclosed "classified information."[735] When Congressional investigators began

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Garay. "The Secret Warriors Tell Their Story," Newsweek, February 9, 1987, pp. 26-28.

[734]Piowaty, John, "Contra Air: Secord's Central American Flying Circus," Soldier of Fortune, October 1987.

[735]"Closing In On Meese," Village Voice, April 21, 1987. The Voice obtained a copy of the agreement signed by William Cooper. It read as follows:

> I acknowledge that by virtue of my duties in conjunction with CAS, Ltd. [Corporate Air Services], I have been exposed to or are the recipient of classified information . . . I am aware that the unauthorized disclosure of classified

to talk to the crews, Ian Crawford, a crew member, was told by Gadd that the military would cancel its contracts with Crawford's parachute rigging company if he talked, and that Crawford could be prosecuted for gunrunning. Other flight crew members said they were intimidated by Gadd and Defendant Secord.[736]

Intensifying the Supply Operation for the Southern Front

At the same meeting, Defendant Secord also agreed to put together an airlift operation to directly increase the supply of weapons and explosives to the southern front contras and expand their operation. The plan was to use Ilopango to store arms until their delivery to Costa Rica and Nicaragua. To do so effectively, the Enterprise needed a large airfield in Costa Rica for refueling and other purposes.

The airfield would also serve another purpose. North had already developed a plan for training contras in Panama for a large-scale invasion of Nicaragua and the capture of the southern Nicaraguan border town of Rivas in early 1986. For this operation to succeed, a very large airfield in Costa Rica for ferrying in men and supplies was also essential.[737]

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information is prohibited by the espionage laws (18 U.S.C. Sections 783, 791, and 798) and prosecution by the U.S. government could result.

Id.

[736]"Closing In On Meese," Village Voice, April 21, 1987.

[737]Deposition of Jose Blandon, February 25, 1988 (hereafter "Blandon Deposition"), pp. 27-8 and 77-80.

Construction of the Point West Airstrip

In July of 1985, Lewis Tambs, the new U.S. ambassador to Costa Rica, conspired with North, Alan Fiers and Elliott Abrams to open up the southern front. Tambs' understanding was that he was to encourage the contras in Costa Rica to move "deep inside" Nicaragua.[738] North also asked Tambs to persuade the Costa Rican government to allow the construction of an airstrip for use by the contras. Tambs stated that he was told the airstrip would be built by private parties. Tambs said Costa Rica approved the strip for refueling purposes and also to be used by the U.S. Southern Command if there was an invasion of Costa Rica by Nicaragua.[739] Other sources indicated that Costa Rica approved the airstrip only for refueling purposes.[740]

In late August of 1985, Defendant Owen traveled to Costa Rica to evaluate a location chosen by North for an airfield that Owen understood could be used as a drop for lethal and non-lethal aid, a staging point for sending both men and supplies into Nicaragua, and as an emergency landing strip if a contra plane was shot down in Nicaragua. He met with Joe Fernandez (a/k/a Tomas Castillo),CIA[741] and Costa Rican officials, and then he and Fernandez visited the site at Santa Elena on the western coast of

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[738]Tambs Congressional Testimony, supra, p. 132.

[739]Tambs Congressional Testimony, supra, pp. 149-51.

[740]"An Ex-Ambassador Says U.S. Ordered Aid for Contras," New York Times, May 3, 1987.

[741]Owen Congressional Testimony, supra, p. 378. See, also, Castillo Congressional Testimony, supra, pp.38-9.

Costa Rica.[742] Owen, Castillo and Jose Ramon Montero Quesada, a colonel in the Costa Rican Rural Guard, walked around the site, and Owen took photographs to take back to North.[743]

In a memorandum reporting the results of his trip to North, Owen said that the cover for this operation was a Panamanian company, "owned by a few 'crazy' gringos, wanting to lease the land for agricultural experimentation and for running cattle," was in the process of being formed.[744] The strip itself would be designated a military zone and guarded by Montero, who managed the property. He was assisted by a Civil Guard colonel, Edwin Viales Rodriguez, who was subsequently indicted in the U.S>, along with the Panamanian pilot Floyd Carlton Caceres, for drug trafficking. In Costa Rica, Viales was charged with protecting flights of cocaine from Colombia which landed in Guanacaste, the province where the Enterprise's

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[742]Owen Deposition, supra, p. 206. The site selected was on the property of Joseph Hamilton, an American from New York, at Santa Elena Peninsula (Point West). Castillo Congressional Testimony, supra, p. 42-3; Iran-Contra Congressional Report, supra, p. 61-2.

[743]Castillo Congressional Testimony, supra, pp. 40-2.

[744]Owen contacted a law firm to investigate setting up cover corporations. In February of 1986, he asked North to cover fees of $532.37 for that legal research. Owen Congressional Testimony, supra, Exhibit RWO-11 (memo dated February 10, 1986, from "TC" [Owen] to "BG" [North].

airstrip was located.[745]

Udall Research Corporation was set up by Defendants Secord and Hakim as the "cover" for the airfield.[746] Ten days after Defendant Owen's return, "Robert Olmsted", who worked for Defendant Hakim and Udall, surveyed and photographed the area and negotiated for the purchase or lease of the property from its owner, Joseph Hamilton, by Udall.[747] Olmsted was actually William Haskell, a former Marine colleague of North's.[748] North alerted Joe Fernandez of Olmsted's mission.[749]

In October of 1985, Richard Gadd, Defendant Secord's associate, attended a meeting with Defendants Secord and Hakim, Olmsted and North at which Gadd was asked to

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[745]"Implicated in Drug Trafficking," La Nacion, December 12, 1986; Owen Congressional Testimony, supra, pp. 349-51 and Exhibit RWO-9 (memo to "BG" (Oliver North) from "TC" (Owen); Secord Testimony, supra, p. 62.

[746]Owen Congressional Testimony, supra, pp. 349-51 and Exhibit RWO-9 (memo to "BG" (Oliver North) from"TC" (Owen); Secord Testimony, supra, p. 62.

[747]Secord maintained it was purchased and tried to sell the asset to the CIA in 1986. Hamilton, however, believed that it was leased.

[748]Iran-Contra Congressional Report, supra, p. 62.

[749]Deposition of Tomas Castillo, Joint Hearings on the Iran-Contra Investigation, pp. 42-44; Gadd Deposition, supra, p. 20. Lewis Tambs, U.S. ambassador to Costa Rica during the construction of the airfield, also met "one-eyed Jack" Olmstead and thought he was the lawyer for Udall Corp. Tambs Congressional Testimony, supra, p. 156.

construct the airfield. Defendant Secord told Gadd that Secord would arrange for the payment for the work.[750] EAST, Inc., one of Gadd's subsidiaries, supervised construction of the airstrip, which continued through March of 1986, and Defendant Secord made at least one trip to Costa Rica to discuss the airstrip.[751] The on-site supervisor was Defendant Quintero, who had earlier negotiated with the local military officials of a third country for basing the airlift operation.[752]

To ensure Civil Guard control of the airstrip, North arranged for Benjamin Piza Carranza, the Costa Rican minister of public security, to meet with President Reagan in March 1986. Piza is a founding member of the rightist Free Costa Rica Movement from which the Costa Rican chapter of the World Anti-Communist League is drawn.[753] After the meeting, Piza then dictated a letter putting the Civil Guard in charge of the airstrip.[754]

The costs for the resupply part of the project were

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[750]EAST, Inc., sent invoices to Lake Resources, Defendant Secord's company, from January 23, 1986, through December 5, 1986. Gadd Deposition, supra, p.22 and Exhibit RBG-3.

[751]Gadd Deposition, supra, p. 21. East was an alias used by Gadd. Owen Congressional Testimony, Exhibit RWO-12; Castillo Congressional Testimony, supra, pp. 94-6.

[752]Castillo Deposition, supra, pp. 44-46; Secord Congressional Testimony, supra, p. 36-7; local hotel records.

[753]Anderson and Anderson, supra, p. 247.

[754]Iran-Contra Congressional Report, supra, pp. 65-6.

presented to North. They included the salaries of two pilots, a mechanic, a loadmaster/packer/rigger and other staff and goods connected directly with the contra resupply effort. Defendant Quintero was to manage the airstrip.[755] Despite the claimed expenditure of over $1 million,[756] the Point West airstrip was never fully utilized.[757] Felix Rodriguez, who had been a pilot in the Vietnam war and had years of helicopter experience, testified before Congress that a dirt airstrip was not "proper for that kind of operation."[758] Nonetheless, North used the invasion plan as part of his presentation to private donors to obtain funds for the Enterprise. William O'Boyle, a wealthy New Yorker, was told by North in 1986 of a highly secret plan for the contras to seize a part of Nicaragua in order to establish a provisional capital and government. The U.S. would then respond with a naval blockade so that the Nicaraguan government would fall.[759]

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[755]Owen Deposition, supra, p. 210.

[756]Secord Congressional Testimony, supra, Exhibit 4, p. 439. The cost included $190,000 paid to local contractors and guards so that the airfield could be built. Iran-Contra Congressional Report, supra, p. 62.

[757]Secord tried to sell the airfield to the CIA in 1986. He claimed the land cost was approximately $500,000. Secord Congressional Testimony, supra, Exhibit 4, p. 447. Castillo alleged that Secord had paid $50,000 for the land. Castillo Congressional Testimony, supra, p. 44.

[758]Rodriguez Congressional Testimony, supra, p. 92-3 (May 28, 1987).

[759]O'Boyle Congressional Testimony, supra, p. 138-9.

However, the Enterprise was able to make nine successful flights to the southern front contras between April and September of 1986.[760] The defendants carefully supervised the operation. In April of 1986, Gadd was told by Defendant Secord and North to provide an air drop of munitions and supplies to FDN troops on the southern front. Southern Air Transport arranged the drop, which took place on April 11.[761] Later in April, Defendant Secord, Gadd and North met with UNO and FDN leaders in El Salvador to discuss logistical support and see the living conditions of the crews. Defendant Quintero and some crew members traveled with them. On the return flight, three crew members, including Ian Crawford, returned with Secord, Gadd and North.[762]

This venture of the resupply operation also utilized personnel and equipment with drug trafficking connection. In February of 1986, Owen told North that one of the Summit Air planes contracted for was formerly used for drugrunning, and that the crew had criminal records.[763]

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[760]The fiights were in April (1); May-July (2); and September (6). Castillo Congressional Testimony, supra, pp. 64-5.

[761]Gadd Deposition, supra, pp. 33-5; Castillo Congressional Testimony, supra, pp. 57-60. Aircraft delivered 20,000 pounds of lethal material, and drop information was provided by KL-43 from Castillo to Defendant Quintero. Id., p. 61 and Exhibit TC-6 (KL-43 message from Col. North to Castillo).

[762]Gadd Deposition, supra, pp. 44-5.

[763]Owen Congressional Testimony, supra, Exhibit RWO-11 (memo dated February 10, 1986, from Owen ("TC") to

In May of 1986, the Costa Rican Civil Guard was ordered by the Costa Rican government to close down the airstrip. However, by August, there were rumors in the area that large, camouflaged planes and 400 contras were still based there. In September, President Arias closed the airstrip down again.[764]

Defrauding the U.S. Government: Illegal Use of Tax-exempt Funds by the Enterprise

In 1985, a network of private, tax-exempt foundations and organizations formed by Carl R. ("Spitz") Channell began to raise money for the military support of the contras. Channell's principal organization, the tax-exempt National Endowment for the Preservation of Liberty (NEPL), used White House briefings and private meetings with the President Reagan to convince donors to contribute more than $10 million to the contras by the end of 1986. Approximately $1.7 million was laundered for the Enterprise through various domestic and foreign companies. Another $1 million went to Defendant Calero's accounts, and another $500,000 went to other persons and groups.[765] Most of those funds were ultimately used to purchase military equipment or to otherwise benefit members of the Enterprise.

Channell, who had been a fundraiser for the National Conservative Political Action Committee (NCPAC), incorporated NEPL in 1984. In its application for tax-exempt status under Section 501(c)(3), NEPL asserted that it was formed "to educate members of the general public

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North ("BG").

[764]Iran-Contra Congressional Report, supra, p. 76.

[765]Iran-Contra Congressional Report, supra, p. 85.

on American political systems and societal institutions" through the study of the development of American political systems. On December 12, 1984, NEPL was granted its tax-exempt status.

Working with Channell was Richard R. Miller, a former employee of the Agency for International Development, who ran a company called International Business Communications (IBC). In February of 1984, Miller began working with Frank Gomez who had a non-competitive contract from the State Department to assist its newly-formed Office of Public Diplomacy. The General Accounting Office later charged that this office engaged in "prohibited, covert propaganda activities designed to influence the media and the public to support the Administration's Latin American policies."[766] IBC also represented the Nicaraguan Development Council, one of Defendant Calero's organizations. A White House aide referred to IBC as the "White House outside the White House" on contra issues.[767]

To implement his plan to use NEPL to raise funds for the contras, Channell first obtained a letter from Defendant Calero in April of 1985 authorizing the solicitations. From the very beginning, the solicitations were for military assistance to the contras. Channell and Miller worked out a standard fund-raising process with North. North would give a presentation --including the

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[766]Iran-Contra Congressional Report, supra, Appendix G. IBC received approximately $440,000 from the State Department during a two-year period. The State Department's inspector general subsequently concluded that the continuing, sole-source contracts were of minimal utility. Id., p. 87.

[767]Iran-Contra Congressional Report, supra, pp. 87-8.

provision of munitions lists -- in the old Executive Office Building to potential donors, who would then be taken across the street to the Hay-Adams Hotel for lunch and asked for money. For large contributors, there were private briefings with special big-ticket lists which included airplanes, explosives and large quantities of weapons. Occasionally, Defendant Calero would participate in the solicitations.[768]

Under the direction of North, Miller and Gomez set up I.C., Inc., in the Cayman Islands as a conduit through which funds contributed to the tax-exempt NEPL could be transferred to the contras.[769] The funds went from NEPL through IBC to be laundered by I.C. for disbursal and use by the Enterprise.[770]

On March 31, 1986, the day the Congressional authorization of humanitarian aid for the contras expired, IBC received checks for $500,000 and $225,000 from NEPL. On April 3, North reminded himself to tell Secord to send "650K to LAKE."[771] On April 11, IBC transferred $650,000 to the Lake Resources bank account in Switzerland, and Defendant Secord noted its receipt.[772]

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[768]Garwood Congressional Testimony, supra, p. 71; Iran-Contra Congressional Report, supra, pp. 90-6.

[769]In May of 1986, I.C.'s name was changed to Intel Co-Operations, Inc. Iran-Contra Congressional Report, supra, p. 91.

[770]Iran-Contra Congressional Report, supra, p. 101.

[771]Tower Commission Report, supra.

[772]Chronology, supra, p. 458, citing NEPL Bank Statement of March 31, 1986 and Washington Post, March 7, 1987.

Big contributors to NEPL included Nelson Bunker Hunt ($484,500); Barbara Newington ($2,866,025); William O'Boyle ($160,000); and Ellen Garwood ($2,518,135). Most of these donors received tax deductions for funds to purchase military supplies. When O'Boyle expressed concern about the legality of the deduction, Channell assured him that the money would not be traced.[773] The Heritage Foundation gave another Miller organization a $100,000 grant which also went to I.C. A donation from Adolph Coors of $65,000 for a Maule airplane went directly to the Enterprise's Lake Resources' account in Switzerland to be laundered and then used for the purchase of the airplane from the U.S.-based Maule Air, Inc.[774] North agreed that Miller and Gomez should collect 10 percent of the money they were raising, because other people providing assistance were taking "20% to 30%." This commission went to a second Cayman Island corporation, World Affairs Counselors, Inc.[775]

The Congressional committees investigating the Iran-Contra affair traced $430,000 of the donated funds to the Enterprise's Lake Resources account, and $1,030,000 to Defendant Calero's off-shore accounts.[776] Large amounts of money also went to rent expensive offices, pay extremely high salaries to Channell, Miller and others, and

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[773]O'Boyle Congressional Testimony, supra, p. 83.

[774]Testimony of Joseph Coors before the Joint Committees, May 21, 1987 (hereafter "Coors Congressional Testimony"), pp. 51-2 and 100.

[775]Iran-Contra Congressional Report, supra, pp. 95-101.

[776]Iran-Contra Congressional Report, supra, p. 101.

lease limousines. Many of these expenditures were "approved" by North.[777] On April 29, 1987, Channell pled guilty to defrauding the Internal Revenue Service and depriving the Treasury of revenue to which it was entitled by soliciting contributions to purchase military and other types of non-humanitarian aid for the contras. Miller pled guilty to a similar charge on May 6, 1987.[778] North was subsequently indicted for conspiring to defraud the United States, the Department of Treasury and the Internal Revenue Service.[779]

Illegal Uses of Humanitarian Aid

In January of 1985, Defendant Calero gave Defendant Owen the funds to establish the Institute for Democracy, Education and Assistance ("IDEA"), a tax-exempt organization, and the Council for Democracy, Education and Assistance, a lobbying organization. Its offices were in Owen's home,[780] and it was used by the Enterprise to further its illegal activities.

In August of 1985, Congress approved $27 million in humanitarian aid for the contras to be administered by the State Department. In October, Defendant Calero and Owen conspired to obtain government funds to pay for Owen's work for the Enterprise. Calero signed a letter drafted by Owen which was addressed to Robert

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[777]Iran-Contra Congressional Report, supra, p. 98.

[778]Iran-Contra Congressional Report, supra, p. 100; Information in U.S. v. Carl R. Channell, U.S. District Court for the District of Columbia, April 29, 1987.

[779]Poindexter et al. Indictment, supra, Count 23.

[780]Owen Congressional Testimony, supra, pp. 432-3.

Duemling, the head of the State Department's fledgling Nicaraguan Humanitarian Assistance Office (NHAO). Calero recommended that IDEA, of which Owen was the founder, president and only employee,[781] be given a monthly "donation" of $4,850 for the "full-time services of Mr. Owen, plus the cost of personal insurance, FICA [Social Security] and other reasonable costs" to coordinate procurement, transportation and distribution of goods and services. Defendant Calero admitted to Congress that the request was made by Owen because Owen wanted to "continue to work in this endeavor," but needed something to live on.[782]

Despite this recommendation and an earlier one from Oliver North, Duemling refused to hire Owen until additional pressure was placed on him by North.[783] In November of 1985, Defendant Owen left the FDN payroll and went to work for NHAO. IDEA's contract with NHAO authorized him to assist the United Nicaraguan Opposition (UNO) in preparing proposals to and administering grants from NHAO to UNO. In that position, he was prohibited from performing "any service which is related to the acquisition, transportation, repair, storage or use of weapons, weapons systems, ammunition

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[781]Owen Congressional Testimony, supra, p.355. Owen testified that he set up IDEA in January of 1985 at the same time he set up a 501(c)(4) lobbying organization called the Council for Democracy, Education and Assistance. Id. IDEA's only receipts were the funds from the State Department. Id. at 418.

[782]Calero Congressional Testimony, supra, p. 143-5 and Exhibit AC-5.

[783]Iran-Contra Congressional Report, supra, p. 63.

or other equipment, vehicles or material which can be used to inflict serious bodily harm or death" during the five-month term of the grant.[784]

Despite this provision and in furtherance of the Enterprise, Defendant Owen used his position to continue his activities to illegally supply the contras with arms and other military assistance.[785] After each trip to Central America -- which were now paid for by NHAO funds -- he would file two reports: one to NHAO concerning humanitarian aid; and a second to North detailing his activities in coordinating lethal aid.[786] He mixed the delivery of humanitarian with lethal aid to benefit the corporations of the Enterprise.

In December of 1986, the General Accounting Office issued a report on the disbursement of $26.8 million in humanitarian aid. It determined that NHAO could not verify most of the receipts for the purchases of goods provided to it by Owen and Defendant Calero. NHAO itself had determined that $80,000 of the disbursements

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[784]Owen Congressional Testimony, supra, Exhibit RWO-17 (letter dated Nov. 6, 1985, from Robert W. Duemling to Owen). The grant was subsequently extended until June 15, 1986. Id.

[785]Defendant Owen stated during the Congressional hearings concerning his trips to Central America during his employment for NHAO, "[e]very time that I did something for Colonel North I was going down there anyway." Owen Congressional Testimony, supra, p. 397.

[786]Iran-Contra Congressional Report, supra, p. 63; see, e.g., Owen Congressional Testimony, supra, Exhibit RWO-11 (Memorandum from "TC" [Owen] to "BG" [North], dated February 10, 1986).

were based on false receipts, and that some of the funds had been used to purchase ammunition and grenades. Approximately $6 million was placed in the bank accounts of "brokers" in the United States for use by Central American suppliers. The "brokers" were able to obtain increases of the principal of up to 31 percent in currency transactions. NHAO officials stated -- but could not verify -- that the United Nicaraguan Opposition received the excess funds.[787]

The GAO investigators turned up countless illegible signatures for receipt of cash, or illegible receipts for other supposed purchases. One supplier simply called "Supermercado" [Supermarket] received over $1 million with records in which the payee, endorser and location were all illegible.

Defendant Owen and NHAO could not trace the funds paid to the broker accounts, and GAO was able to identify payment of only a small amount of funds to specific regional suppliers. In one country, payments had been made to the armed forces of another country.[788] Brokers and other suppliers were often chosen because of their relationship with the Enterprise, even when they were suspected drug traffickers.

One of the brokers selected by Defendants Hull and Owen -- on the grounds that it had "helped" the contras -- was Ocean Hunter, the Miami shrimp importing company

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[787]United States General Accounting Office, "Central America: Problems in Controlling Funds for the Nicaraguan Democratic Resistance," December 1986 (hereafter "GAO NHAO Report").

[788]GAO NHAO Report.

of Defendant Chanes.[789] Its contract was to provide assistance to the Kisan-South Miskito Indian contra organization. Ocean Hunter and its Costa Rican supplier, Frigorificos de Puntarenas, run by Defendant Nunez and ostensibly a shrimp exporting company, were both suspected of drug dealing and providing military assistance to the contras.

In actuality, Frigorificos de Puntarenas was a front used by Defendants Chanes, Nunez Escobar and Ochoa and the Medellin drug cartel to provide funds for the contras. Ramon Milian Rodriguez, a Cuban-American accountant in charge of money laundering for the cartel, testified before a Senate Foreign Relations subcommittee, that he set up "interlocking chains of companies" around Frigorificos to accomplish this purpose.[790] Felix Rodriguez, another Bay of Pigs veteran who was a key player in the resupply network, would contact Milian Rodriguez and tell him where to put the money.[791]

Ocean Hunter was also a small money launderer for Milian-Rodriguez. Its other partner was Luis Rodriguez, a partner of Milian-Rodriguez in two Panamanian companies called Ahoremusa Holdings S.A. and Akaba Investments S.A. Luis Rodriguez has been described by Customs sources as a major cocaine trafficker. According to Milian-Rodriguez, it moved about $5 million a year and was also a cocaine trafficker. In late 1983, a freighter owned by Ocean Hunter had been used to ferry cocaine

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[789]Owen Deposition, supra, p. 349.

[790]Milian Rodriguez Testimony, supra.

[791]"Drug Money Alleged to Go to Contras," Washington Post, February 12, 1988, citing earlier news interviews with Milian Rodriguez.

from Limon, Costa Rica, to Miami.[792] Jesus Garcia stated that he had seen three kilos of cocaine at Chanes' house in March of 1985 while picking up arms for a shipment to the contras.[793] Although the Drug Enforcement Agency indicated an unusual lack of interest in Ocean Hunter, despite the fact that its agents knew it was trafficking in cocaine, in 1987, the Customs Service finally began a full-scale investigation.[794]

It is unclear as to what humanitarian supplies -- if any -- these two shrimp companies provided to the contras with the funds provided to them. However, some of the $231,587 turned over to Ocean Hunter between January and May of 1986 turned up in the Israel Discount Bank and Korean Exchange Bank at the same time those countries were supplying arms to the contras.[795]

Defendant Owen was the NHAO overseer for Ocean Hunter and Frigorificos and was in close touch with both Defendants Chanes and Nunez. Owen was warned sometime in 1986 by an intelligence agent about using Ocean Hunter because of its alleged drug trafficking connection, but continued its contract.[796] In his

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[792]Cockburn, supra, p. 166.

[793]Cockburn, supra, pp. 156-7. Shrimp boats are particularly well-suited for drug smuggling because the shrimp are frozen and sealed in containers and will spoil if the containers are opened. If nothing is found, the inspectors may be liable for damages. Id.

[794]Cockburn, supra, pp. 165-7.

[795]Cockburn, supra, p. 160.

[796]Owen Deposition, supra, p. 347.

deposition, Owen said he thought the companies had been checked out by the FBI, but Robert Duemling, NHAO's head, said they have never been checked with the FBI or DEA. An attempt to investigate Frigorificos in Costa Rica was headed off by then-Ambassador Tambs.[797]

In order to cover the illegal and improper uses it made of the humanitarian aid funds, the Enterprise falsified receipts from Kisan-South. Defendant Owen was aware of the false receipts provided to NHAO.[798] and not only took no steps to stop it, but also participated in the diversion scheme. In 1987, a clerk from Creaciones Fancy, a San Jose clothing store, identified Defendant Owen as the "gringo" who came into her discount store to obtain a false receipt for $25,870. Jenelee Hodgson, a Miskito leader, stated that Defendants Owen and Vidal told her of the false receipt. Military supplies were purchased with the money. Owen and Vidal also claimed to be using the $231,000 designated for Kisan-South, Hodgson's group, for uniforms for 1,000 combatants, although it never had more than 50. The arms and supplies went to Pastora's commanders to entice them to leave Pastora. Cash gifts of up to $5,000 also went to the commanders who left Pastora in 1986.[799]

The NHAO employee sent to investigate the alleged misuse of government funds forced Hodgson and Franklin Reed, another Kisan-South official, to sign affidavits that

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[797]Cockburn, supra, p. 162. .

[798]Owen Congressional Testimony, supra, pp. 380-2; RWO-13 (Memorandum from "TC" [Owen] to "BG" [North], dated March 17, 1986).

[799]"State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

they had committed the fraud "so it didn't all blow up." Defendant Owen was not questioned about the falsified receipt.[800] Owen was well aware of the illegal uses of the NHAO and other funds by the Enterprise, and the inability of other contra leaders to effect change. On April 7, 1986, he wrote to North:

> A big concern he [Arturo Cruz Sr.] voiced is the problem with corruption. On two separate occassions [sic] he said "I believe Adolfo Calero is an honest man. I don't believe he would steal or that he is corrupt." He did not say the same about Mario [Calero] or Aristedes [Sanchez]. He asked a number of questions regarding what I knew about possible corruption, and what is going on at NHAO.[801]

NHAO and Michael Palmer: Another Deal with Drugs

Another drug smuggler selected to receive NHAO funds by the Enterprise was Michael Palmer, a former Delta Airlines pilot who had access to airplanes, munitions, counterfeit I.D.s and a drug fortune estimated at $30 million. Leigh Ritch, another drug dealer, testified before Congress recently that Palmer was the "top man" in an organization that grossed billions of dollars in marijuana.[802]

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[800]"State Department Adviser Tied to Misuse of Rebel Aid," Miami Herald, February 16, 1987.

[801]Owen Congressional Testimony, supra, RWO-15 (memo from "TC" [Owen] to "William" [North], dated April 7, 1986, entitled "Recent Trip."

[802]"Panel to Probe Alleged Contra-Drug Trade Links," Boston Globe, February 13, 1988.

A year prior to his selection, Palmer was in a Colombian jail on a drug charge. Palmer and his companion, Kenneth Alexander Jayson, using a Beechcraft A-80, had gone to Valledupar, Colombia, to pick up 2,000 pounds of marijuana and deliver $1 million. Palmer and Jayson were arrested by the army but released after they paid $250,000.[803] Nonetheless, through his company, Vortex, Palmer was paid $96,961 by NHAO for supply flights to Central America just months before he was indicted in Detroit for being a key player in a huge drug syndicate that operated in Tampa, Detroit and Raleigh, North Carolina from 1977 to 1986.[804] Like other pilots, on the return flights, Palmer was allowed to run drugs. The Customs Service, at the request of certain officials of the CIA, did not search the planes used by the supply operation.[805]

In October of 1987, the charges against Palmer were dropped after he participated in a sting operation in the same plane he had used for humanitarian aid purposes.[806] The plane,a DC-6, was also used by Michael Tolliver in 1985 to take a planeload of contra arms Aguacate in

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[803]Affidavit of Alejandro Cerna Sanchez, January 26, 1987, filed in U.S. v. Sanchez (S.D. Texas) (hereafter "Cerna Affidavit"), pp 2-3.

[804]U.S. v. Michael P. Vogel et al., Case No. 86-80368 (E.D. Mich. 1986)

[805]"Panel to Probe Alleged Contra-Drug Trade Links," Boston Globe, February 13, 1988.

[806]Corn and Morley, "Beltway Bandits: The Elusive Contra Drug Suspect," The Nation, March 12, 1988, p. 332; "Inside Vortex," Village Voice, October 20, 1987.

Honduras and return with 25,000 pounds of marijuana into Homestead Air Force Base.[807]

In November of 1987, relatives of Alejandro Cerna Sanchez went to Valledupar to obtain copies of Palmer's arrest record. While there, they became aware that two agents of the United States government were attempting to obtain the original arrest documents and destroy all evidence of that arrest.[808] Cerna also stated in an affidavit that, as part of the sting, Palmer was allowed to keep most of the marijuana and to illegally export AR-15 rifles and ammunition to a partner in Mexico.[809]

NHAO: Contract with Gadd

Defendant Owen also used his position at NHAO to obtain government contracts for other Enterprise corporations involved in the delivery of lethal aid to the contras. Shortly after his employment, Owen, working with Defendant Secord, obtained a NHAO contract from Duemling for Airmach, Gadd's air supply business, which was also delivering lethal aid to the contras.[810] Upon one occasion, the Enterprise instructed Gadd to make an "emergency" delivery of humanitarian supplies to El Salvador so the Enterprise could use it for a lethal delivery at the same time. When the plane arrived in El Salvador, a representative of Defendant Calero told the crew to go

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[807]Cockburn, supra, p. 184-6.

[808]Cerna Affidavit, supra, p. 3.

[809]Cerna Affidavit, supra, pp. 7-8.

[810]Gadd Deposition, supra, p. 24-6; Iran-Contra Congressional Report, supra, pp. 63-4; Cockburn, supra, p. 217.

to Aguacate, where they were then told to load ammunition on to the same plane for delivery to the contras in the field.[811]

Combining Deliveries of Lethal and Humanitarian Aid

In March of 1986, Defendant Owen, through the fraudulent use of travel funds provided for by NHAO, made a trip to Central America during which he personally supervised the use of an L-100 chartered by Southern Air Transport -- another Enterprise contractor -- to deliver humanitarian supplies for delivering munitions to the contras on the southern front. Under the direction of the Enterprise, Owen flew down to Ilopango in El Salvador, where the humanitarian supplies were unloaded and -- when the munitions were not available -- flew on to Aguacate in Honduras and made contacts with Defendant Calero's FDN representative, Defendant Secord, North and Gadd to attempt to obtain the munitions. Felix Rodriguez, Col. James Steele, Ramon Medina (Luis Posada Carilles[812]) and Defendant Quintero attempted to help Owen to obtain the munitions, but were unsuccessful.

As a result of that experience, Defendant Owen recommended that both lethal and non-lethal aid be stored in Honduras, and that Southern Air's L-100 be used for

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[811]NHAO refused to pay for the part of the flight during which the ammunition was transported. Iran-Contra Report, supra, p. 65.

[812]Posada is wanted in Venezuela for his part in the bombing of a Cubana airplane. During his Congressional testimony, Felix Rodriguez stated that he had helped Posada escape from Venezuela. Rodriguez Congressional Testimony, supra, p. 72 (May 28, 1987).

drops in the south until the Santa Elena airstrip was ready. He also discussed various munitions needs of the contras. Owen also used this NHAO trip to travel to Costa Rica and obtain a list of weapons needed by the contras there as he did during several other trips in February and March of 1986.[813]

In April of 1986, the Enterprise arranged to get a second NHAO flight for Southern Air Transport's L-100 to deliver humanitarian supplies. When the plane reached Honduras, the Enterprise added munitions for delivery to the contras in the field. Under this scheme, NHAO paid for most of the cost of delivering lethal aid to the contras.[814]

After the March trip, Owen also suggested that a secure communications channel be provided for the Enterprise between Honduras, Point West and the "UNO Sur" radio shack in Costa Rica. In April, Col. North provided Defendant Owen with a KL43, a secure communications device already in the possession of Defendant Quintero, Felix Rodriguez, Defendant Secord and Gadd, Col. Steele and Southern Air Transport for delivery to Tomas Castillo in Costa Rica. Owen delivered it on one of his NHAO trips.[815]

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[813]Owen Congressional Testimony, supra, pp. 356-9; Exhibit RWO-14 (Memorandum to "BG" [North] from "TC" [Owen] dated March 28, 1986.

[814]Iran-Contra Report, supra, p. 66.

[815]Owen Congressional Testimony, supra, p. 360; Castillo Congressional Testimony, supra, pp. 106; Secord Congressional Testimony, supra, p. 66. Robert C. Dutton, who worked with Defendant Secord, mentioned KL43 communications several times in his testimony. See, e.g.,

Enterprise's Use of Tax-Exempt Funds for Political Purposes

The Enterprise used CDEA, Defendant Owen's 501(c)(4) tax-exempt organization as a mechanism to funnel tax-exempt donations from Carl Channell's National Endowment for the Preservation of Liberty ("NEPL") into lobbying efforts to obtain Congressional votes for contra aid. During the first half of 1986, CDEA, which was funded by NEPL through another organization called Sentinel, hired lobbyist Bruce Cameron for $6,000 per month. This expenditure was only part of a larger, illegal political campaign.[816] In April of 1987, the Democratic Congressional Campaign Committee filed a complaint with the Federal Election Commission charging Channell and NEPL, Sentinel and the American Conservative Trust with violating federal laws governing tax-exempt organizations by soliciting money for political advertisements and attempting to influence elections directly.[817]

Fraudulent Obtaining of Intelligence Information

In order to further the goals of the Enterprise,

Dutton Testimony, supra, pp. 33-8, 46, 65, 74-6, 80, 93 and 205. The KL43 is a highly classified military communications device, which Dutton obtained from the National Security Administration. Id., p. 207.

[816]Central American Freedom Program Budget, NEPL (undated);
CDEA Report Pursuant to Federal Regulation of Lobbying Act, July 15, 1986.

[817]Complaint of Democratic Congressional Campaign Committee, April 28, 1987.

defendants also fraudulently obtained and transmitted highly secret intelligence information to the contras. In the fall of 1984, Lt. Col. Oliver North, who misrepresented his position, requested the information from the CIA and the Department of Defense, ostensibly for his use at the National Security Council. However, North then transmitted the information to the Enterprise through Defendant Owen who provided it to Defendant Calero.[818] Specifically, North obtained intelligence information from the CIA and the Defense Department on the location of Nicaraguan HIND-D helicopters to assist Defendant Calero is destroying them.[819]

Procurement of David Walker by the Enterprise to Further Crimes of Violence

The intelligence passed on by North to the Enterprise was to be used by a British mercenary it had hired. In late 1984, North, upon the suggestion of John Lehman, secretary of the Navy, met with David Walker, a former British Special Air Services officer, and he and Defendant Calero authorized an arrangement under which Walker would work with Defendant Calero to destroy the HIND helicopters. Defendant Calero also met with Walker. Walker subsequently provided mercenaries who participated in attacks on military installations in Nicaragua, including an attack on an arms depot in Managua on March 6, 1985. His costs were paid for by

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[818]Iran-Contra Congressional Report, supra, p. 43.

[819]Iran-Contra Congressional Report, supra, p. 43, citing Exhibit RCM-31 (North memorandum to McFarlane, dated November 7, 1984, entitled "Clarifying Who Said What to Whom").

the Enterprise.[820] These activities by the Enterprise violated 18 U.S.C. 1952, which prohibit engaging in foreign travel and communications to further a crime of violence.

The Maritime Operation

In 1984, Defendant Singlaub met with Karl Phaler of Freedom Marine, which manufactured Kevlar boats which can evade radar detection and reach speeds of up to 70 miles per hour. Singlaub later introduced Phaler to Calero and Oliver North to discuss the use of the boats by the contras. In the summer of 1985, Owen and Bill Kenney, a Singlaub and Aderholt[821] associate who is a former Navy SEAL, went to Costa Rica and Honduras to investigate the possibility of a maritime operation to mount attacks on the ports of Nicaragua. Kenney had already been working for Defendant Singlaub on a project to supply boats to the contras through an Aderholt company called Alkemal America. His expenses were paid by Singlaub's non-profit U.S. Council for World Freedom, and he was also paid $1,500 a month by Defendant Calero.[822]

Owen introduced Kenney to Defendant Nunez with the idea that Kenney would "work" for Nunez's shrimp-processing front company, Frigorificos de Puntarenas. Phaler, Singlaub, Kenney, John (I.W.) Harper, an explosives and munitions expert also associated with Singlaub, and Robert K. Brown, and Owen met during

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[820]Iran-Contra Congressional Report, supra, p. 44. North Congressional Testimony, July 13, 1987, supra, pp. 142-43; Id., July 14, 1987, p. 79-80; Calero Congressional Testimony, supra, pp. 161-2.

[821]Singlaub Deposition, supra, p. 91.

[822]Singlaub Deposition, supra, p. 131.

that same trip in Honduras to discuss training boatmen.[823] Harper had previously been in Honduras to teach the contras demolition skills and "tradecraft" intelligence skills. Shortly thereafter, three boats were sold to the contras and outfitted with machine guns to be used for resupply and "offensive" activities in Nicaragua.[824]

By April of 1986, the Enterprise had established a cover operation in Limon through a new company established by Defendant Nunez and were making arms shipments into Nicaragua. Bill Kenney was requested to come and run the operational aspect.[825]

Defendants Singlaub's, Nunez's and Calero's maritime operation extended far beyond the provision of three machine-gun-outfitted boats and explosives training, however. They were planning a large maritime front on the Atlantic Coast. In late 1985, on behalf of Defendant Singlaub and the U.S. Council for World Freedom, Kenney contacted a Louisiana marine engineering firm to contract for the development, testing, evaluations and fabrication of a non-magnetic, corrosive-resistant submachine gun and other hardware "for utilization by the CONTRA's [sic] maritime insurgency."[826] The firm agreed to procure three

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[823]Owen Deposition, supra, pp. 196-8.

[824]Owen Deposition, supra, p. 472; Corn, "The Case of the 'Stealth' Boats," The Nation, January 9, 1988.

[825]Owen Congressional Testimony,supra, RWO-15 (memo from "TC" [Owen] to "William" [North], dated April 7, 1986, entitled "Recent Trip."

[826]Singlaub Deposition, supra, Exhibit A, p. 50 (letter from Randall M. Smith to John K. Singlaub, dated September 4, 1986).

.50-caliber machine guns and to "acquire and assemble Ten (10) Man Team with alternates for Special Project."[827]

The Louisiana firm produced eight prototype machine guns for the contras' covert amphibious operations and delivered them to Kenney for transshipment to the "end-users." At least one of the guns was delivered to the contras.[828] In payment, it received $15,000 through a Bahamanian bank account it set up upon the direction of Kenney. When Kenney and Singlaub failed to come up with the additional $22,000 spent on the projects, the president of the firm wrote Singlaub in September of 1986 and threatened him with the "political consequences of exposure." Singlaub then arranged for another $15,000 from a private donor to be paid to the firm.[829]

The fabrication of machine guns in the United States and their delivery to the contras was done in violation of numerous arms control laws in the United States. The U.S. Council for World Freedom did not have the proper licenses to export guns to the contras in Central America. Moreover, it was a tax-exempt, non-profit organization which could not legally raise funds to manufacture and deliver weapons.

The Enterprise Takes Over A Business For Racketeering Purposes

In 1981, Robert B. Fletcher created and operated the Animal Factory, a small company in Marietta, Georgia,

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[827]Singlaub Deposition, supra, Exhibit A, pp. 53-4.

[828]Singlaub Deposition, supra, p. 135.

[829]Singlaub Deposition, supra, Exhibit A, pp. 50-1 (letter from Randall M. Smith to John K. Singlaub, dated September 4, 1986).

which manufactured animal puppets. By 1984, Fletcher had developed a moderately productive company.[830] At the end of 1984 or the beginning of 1985, Fletcher was contacted by a business in another office in his building. In approximately February, 1985, he met Gary Best, the head of that company, who explained that his business, Vista Distribution, USA was an import/export wholesale operation that sold watches to convenience stores.[831]

Vista immediately made an offer to buy out the Animal Factory, which Fletcher accepted after Best promised to pay off Fletcher's debts, advertise his puppets and put more money into the company. Fletcher was put on salary and the toy company was renamed Vista Animal Factory USA.[832] Best became chief executive officer of both the toy company and Vista Distributions. Fletcher was given an office in Vista Distributions.[833]

Shortly thereafter, Fletcher began to notice extremely unorthodox practices at Vista including the lack of effort to resell thousands of dollars worth of watches that were returned and the receipt of telex messages which discussed shipments of fireworks and potatoes from Switzerland, Hong Kong and Pakistan even though Vista was not doing

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[830]Deposition of Robert B. Fletcher, 11/12/87 (hereafter "Fletcher Deposition"), p. 6-7; Jim Naureckas, "Inside the Animal Factory," In These Times, Feb 17-Feb 23, 1988 (hereafter "Animal Factory"), p. 12.

[831]Fletcher Deposition, supra, p. 13; "Animal Factory," supra, p. 12.

[832]Fletcher Deposition, supra, p. 14; "Animal Factory," supra, p. 12.

[833]Fletcher Deposition, supra, pp. 17-19.

business in those locales. When Fletcher asked Best to explain this, Best replied that he sold military aircraft and helicopters.[834] Best gave Fletcher more information about the true nature of the company, but warned him not to tell anyone. He then threatened Fletcher by pulling the trigger of an imaginary gun.[835]

There were also many telephone calls and personal visits to Vista from various military officers. Harry (Heinie) Aderholt, a retired U.S. general and Enterprise associate, was in constant touch with Best, and it became apparent that Best and Aderholt were working on aiding the contras against the government of Nicaragua in clear violation of the Neutrality Act. Aderholt remarked to Fletcher that he had "some of his boys working in Nicaragua."[836]

Defendant Singlaub joined this operation in the fall of 1985. Singlaub came to Vista's office on at least one occasion in late September or early October, 1985 and met privately with Best and Aderholt. After this meeting, Best came into Fletcher's office and told him that "General Singlaub is with us now."
Singlaub was subsequently in frequent contact with the office.[837]

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[834]Fletcher Deposition, supra, pp. 22-24; "Animal Factory," supra, p. 12.

[835]Fletcher Deposition, supra, pp. 60-61; "Animal Factory," supra, p. 12..

[836]Fletcher Deposition, supra, p. 24-28; "Animal Factory," supra, p. 12.

[837]Fletcher Deposition, supra, p. 80-81; "Animal Factory," supra, p. 12.

Singlaub acknowledged that he had visited Vista and Best, but stated that it was in relationship to a MIA project he and Aderholt were involved in.[838]

Other associates of the Enterprise were also evident at Vista. Vista's American Express account paid for a round-trip ticket to Managua for Bill Kenney, who was working for Singlaub and Aderholt on various armaments projects for the contras.[839] On another occasion in mid-1986, after Fletcher had left the company, Kenney brought in one of the machines guns discussed above to the Vista office to show Best.[840] Kenney's association with the Enterprise was explicitly demonstrated in a March 1986 memorandum to Oliver North from Defendant Rob Owen which stated that Kenney "now works with Singlaub and Heinie Aderholt." Owen wrote that Kenney "seems upfront and able to keep his mouth shut" and recommended him for a proposed contra operation.[841]

Vista was also involved in Iran arms sales. Best attempted to open a channel to Iran through one of Fletcher's contacts, an oil businessman named Raj Malliick. Best was "trying to locate aircraft replacement parts and also potentially a couple of large aircraft" for sale to Iran in May or June of 1985, two or three months before the

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[838]Singlaub Deposition, supra, pp. 86-90.

[839]Fletcher Deposition, supra,pp. 99-100,107; "Animal Factory," supra, p. 12.

[840]Fletcher Deposition, supra, pp. 102-103.

[841]Owen Congressional Testimony, supra, Exhibit RWO-13 (memorandum from "TC" [Owen] to "BG" [North], dated March 17, 1986, entitled "Overall Perspective"; "Animal Factory," supra, pp. 12-13.

White House approved Israel's airplane-parts-for-hostages deal with Iran. The sale apparently never materialized.[842]

Vista's operations included aiding the rebels fighting in Angola. Best offered Fletcher $2,000 a flight to be an information courier the Angolan insurgents. But he warned that this work was dangerous, and that Fletcher could be killed if he talked to the wrong people. Fletcher eventually declined to get involved in this operation.[843]

It soon became apparent that Vista was not putting money into Fletcher's toy company as agreed, but that it was being used as a cover and its profits fraudulently diverted to covert operations. Fletcher also became aware that Vista's books were illegally being altered.[844]

Fletcher finally confronted Best in December of 1985 about these unlawful practices. Best ordered Fletcher to leave. Fletcher left as he didn't have the resources to mount a legal struggle and was fearful for his health and safety because of earlier threats made by Best.[845] Fletcher estimated that the Enterprise's takeover of his company cost him at least $100,000.[846]

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[842]Fletcher Deposition, supra, pp. 85-89, 90-94, Exhibits 4 and 5; "Animal Factory," supra, p. 13.

[843]Fletcher Deposition, supra, pp. 58-60, 68-69; "Animal Factory," supra, p. 13.

[844]Fletcher Deposition, supra, pp. 69-71, 114-115; "Animal Factory," supra, p. 13.

[845]Fletcher Deposition, supra, pp. 118-119.

[846]Fletcher Deposition, supra, p. 119; "Animal Factory," supra, p. 13.

United States Council for World Freedom: The Enterprise Uses Tax-Exempt Funds to Assist the Contras

Many, if not all, of the expenses of Defendant Singlaub's trips to raise money for the contras and to provide military assistance were improperly paid for by the U.S. Council for World Freedom (USCWF), a tax-exempt 501(c)(3) organization, and other tax-exempt groups that Singlaub controlled. Defendant Singlaub described the purpose of the Council as providing "support and assistance to the democratic, anti-communist Freedom Fighters of the world."[847] But its tax-exempt status was granted with the following condition: that "at no time will the USCWF ever contemplate providing materiel or funds to any revolutionary, counterrevolutionary or liberation movement."[848] This provision was honored only in the breach.

The Enterprise also used these foundations to provide tax deductions for contributions of funds and equipment that were intended for the military purposes of the contras or to further the Enterprise itself. In 1985, Ellen Garwood, a wealthy Texas woman, gave the USCWF $65,000 for a helicopter -- which Singlaub publicized as the "Lady Ellen" -- for the FDN. She took a tax deduction for that contribution, which was billed as "humanitarian aid."[849] Another organization, Western Monetary

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[847]Letter from Singlaub to Rev. Don White, Gospel Advance Mission, dated February 13, 1985.

[848]Anderson and Anderson, supra, p. 269.

[849] Mrs. Garwood was quoted as saying, "Give to General Singlaub's U.S. Council of World Freedom, whatever he asks, it's tax deductible [sic]." "Who's Running This War?"

Consultants, Inc., of Fort Collins, Colo., donated $72,000 to repair the Lady Ellen.[850] By 1986, however, Singlaub and other were conspiring to use donated and purchased aircraft to set up a private, revenue-generating company to function as a "complete support" air operation for the contras. The aircraft in USWCF's fleet at that time were: two Helio Couriers; two Bell helicopters; one Cessna 337; and one L-19 Bird Dog.[851] All were either donated or purchased with donated funds.[852]

To further the Enterprise's scheme for appropriating tax-exempt donations, in July of 1986, Defendant Singlaub, through USCWF, conspired with Defendant Calero, Mario Calero, Ed Dearborn, Mike Timpani and Joyce Downey to obtain a C-130A airplane, serial number 57-517, registration number N-3226B, from the Valley National Bank of Phoenix, Arizona, for tax-exempt credits of $1 million. Of that amount, $750,000 of the deductible amount would "pay Valley National Bank the sum of $20,000.00 for each trip the C-130A would make from U.S.A. to base camp," although there was no indication the bank would receive payment for those flights. The plane was to be made "flyable" and delivered to Timpani's Falcon

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Frontline, March 16, 1986.

[850]Letter from Singlaub to William R. Kennedy, Jr., dated February 13, 1986.

[851]Singlaub Deposition, supra, Exhibit A, pp. 55-8.

[852]Statement based upon documents provided to Plaintiffs by Defendant Singlaub.

Wings in Mesa, Arizona.[853] The C-130 is a large transport plane, which is "the mainstay of the U.S. tactical airlift fleet and is often also used for paratroop drops."[854]

Dearborn publicly discussed the creation of what he described as a "contra air force" with the Los Angeles Times in July of 1986 while he was supervising the rebuilding of three of the donated planes in San Diego County: the L-19; one of the Helios; and a Cessna 337. Dearborn made a public appeal for donations of money and more airplanes. Defendant Calero admitted that "his aides" were negotiating for the "purchase" of a C-130 transport for the contras.[855]

Conspiring to Defraud the United States Government: The Three-way Trade Scheme

In the summer of 1986, Defendant Singlaub, Ed Luttwak, Barbara Studley of GeoMiliTech and others conspired to defraud the United States government of millions of dollars which would then be secretly and illegally used to support insurgencies in Nicaragua, Afghanistan, Angola and Cambodia without "the consent or awareness of the Department of State or Congress." The plan was part of the Enterprise's overall objective to support and implement off-the-shelf covert operations without accountability to either the Congress or the President. Singlaub proposed it in a letter to CIA director

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[853]Singlaub Deposition, supra, Exhibit A, p. 55 (letter from Joyce Downey to David Oglivy, dated July 8, 1986).

[854]"Contras Air Force: New Factor Is Added to War," Los Angeles Times, July 26, 1986.

[855]"Contra Air Force: New Factor Is Added to War," Los Angeles Times, July 27, 1986.

Casey which was delivered by Luttwak. Another copy was delivered by Studley to a representative of the National Security Council.[856]

The illegal scheme would work in the following manner: Israel would be provided with credits to obtain high technology items and information from the U.S. Israel then would provide military hardware equal in value to the credits to Poland, which wanted to upgrade its armed forces. Poland would provide Soviet-block weapons to the various insurgencies. The delivery of the weapons to the insurgents would occur through a foreign trading company set up by GeoMiliTech. In the process, money appropriated by Congress for one purpose would be used fraudulently for another, unauthorized, covert purpose. According to Defendant Singlaub, both Israel and Poland were "most interested in pursuing their role in this trade arrangement."[857]

At the same time of the three-way trade proposal, Defendant Singlaub also proposed another violation of U.S. law by suggesting a method by which military equipment could be secretly provided to the contras and paid for by the U.S. government prior to the effective date of Congressional appropriations for military aid. Singlaub presented Casey with a list of over $80 million in arms and explosives, including C-4, available from Poland, which he said could be shipped immediately if Casey would provide a letter of credit to a GeoMiliTech's Swiss bank. The bank would then issue a loan "in the name of a

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[856]Singlaub Congressional Testimony, supra, Exhibit JKS-6 (undated letter on GeoMiliTech stationary from John K. Singlaub to William Casey and enclosures); and Exhibit JKS-5 (undated note from Barbara Studley).

[857]Singlaub Congressional Testimony, supra, Exhibit JKS-5.

corporation of your choice." Singlaub told Casey that

> Our banker is prepared to fly to Washington and take care of the Letter of Credit directly with your designated bank. This eliminates all bank tested telexes or paper trails. . . . It is not necessary for our bank to know your identity, only your banker.
>
> Our bank has been exceptionally discreet in processing our transactions in the past. At the close of the transactions, the bank file will only show corporations, numbered items and amounts. No reference will be made of the specific items involved in the transaction, nor of the individuals or actual organizations involved.[858]

Defendant Singlaub said that GeoMiliTech could provide the items "dockside, ready for shipment," within two weeks of the date of a letter of credit.[859] The transaction would have made GeoMiliTech the largest supplier of military goods to the contras.

Singlaub Pretends to Obtain Enterprise Aid for Pastora

Under the procedures set up by the Enterprise, contra leaders were well aware of the requirement that necessary funds to continue their war came from the Enterprise. At the end of 1984, Defendant Singlaub was in a hotel in

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[858]Singlaub Deposition, supra, Exhibit A, p. 1 (undated letter on GeoMiliTech stationery from John K. Singlaub to William Casey).

[859]Singlaub Deposition, supra, Exhibit A, p. 1 (undated letter on GeoMiliTech stationary from John K. Singlaub to William Casey).

Miami where he met with El Negro Chamorro and Steadman Fagoth, a leader of a faction of the Miskito Indians, who were requesting aid. Pastora also requested aid, but was refused. Pastora contacted Defendant Singlaub again in mid-1985 and "some months later" to ask for aid.[860] During the last contact, Defendant Singlaub said he would talk to "certain people" to see if they could help Pastora.[861] However, because he wanted to see the situation in Costa Rica and persuade Pastora to join UNO, Defendant Singlaub traveled to Costa Rica and Pastora's operations near the Rio San Juan in March of 1986.[862] Prior to his meeting with Pastora, Singlaub met with U.S. Ambassador Lewis Tambs in San Jose and Elliott Abrams in Washington.[863]

Defendant Singlaub promised military and economic aid to Pastora on the condition that Pastora withdraw from the San Juan River and go deeper inside Nicaragua and "coordinate actions with" the FDN.[864] An agreement was

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[860]Prado Deposition, supra, p. 70.

[861]Deposition of Eden Pastora, supra, pp. 95-6.

[862]Testimony of John Singlaub, Joint Hearings on the Iran-Contra Investigation, May 20, 1985 (hereafter "Singlaub Congressional Testimony"), p.240.

[863]Testimony of Lewis Tambs, Joint Hearing on the Iran-Contra Investigations, May 27, 1987 (hereafter "Tambs Congressional Testimony"), p. 177-8.

[864]Pastora and Defendant Singlaub have given somewhat differing testimony about their agreement. Defendant Singlaub stated that the aid was conditioned upon Pastora's entering Nicaragua (Singlaub Congressional

drawn up with these conditions and given to Tambs.[865] Pastora was subsequently told by Singlaub that the agreement had been "approved."[866]

The agreement was sent by Tambs to Abrams on March 27, 1986. Tambs told Singlaub, however, that Singlaub could not negotiate for the U.S. government, but

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Testimony, supra, p. 242-3). Pastora testified that an additional condition was his withdrawal from the San Juan River. Singlaub would then provide "appropriate" equipment to the 300-400 men left inside Nicaragua when the river positions had been abandoned. Pastora Deposition, supra, pp. 96-7. Carlos Prado testified that the military aid would come in two stages: a small amount of weapons initially, regardless of where Pastora was, and a much larger amount when Pastora was in Nicaragua. Prado Deposition, supra, p. 71.

[865]Pastora Deposition, supra, p. 97; Singlaub Congressional Testimony, p. 243. The actual agreement was placed into the record of the Congressional hearings during the testimony of Lewis Tambs, former U.S. ambassador to Costa Rica. It stated that the United States would provide boots, food, ammunition, medicine, maps, military needs for Pastora's troops, including new men who join his army, training advisors. Testimony of Lewis Tambs, Joint Hearings on the Iran-Contra Investigation, May 27, 1987 (hereafter "Tambs Congressional Testimony"), p. 180, Ex. LAT1.

[866]Pastora Deposition, supra, p. 97. Singlaub subsequently testified that Tambs was "very pleased" with the agreement because it "eliminated" problems with Pastora's presence in Costa Rica.

was told that Singlaub meant private U.S. citizens.[867] Tambs' position was not communicated to Pastora.[868]

Defendant Singlaub had spoken to Defendant Calero to get the support to provide the equipment to Pastora. However, this shipment was halted causing the downfall of Pastora.[869]

Bribery: The Enterprise Gives Illegal Gratuities to a Government Official

From late 1985 through 1986, the Enterprise conspired to "promise and pay" illegal gratuities to Oliver North "to encourage North to continue in his position on the staff of the NSC" for the benefit of the rest of the members of the Enterprise. North's continuance on the NSC was necessary for the Enterprise could continue on in its lucrative activities.[870]

The first gratuity to North involved the provision of a security system at North's house. North claimed to be concerned about security for his family because of terrorist threats.[871] On April 29, 1986, Defendant Secord hired

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[867]Tambs Congressional Testimony, supra, pp. 180-2.

[868]Tambs Congressional Testimony, supra, pp. 189-90.

[869]Singlaub Congressional Testimony, supra, pp. 244-45; Pastora Deposition, supra, pp. 97-98.

[870]Poindexter et al. Indictment, supra, Count 17, pp. 81-2.

[871]The system that was finally designed after consultation with North was not designed to repel terrorists, but merely trespassers. Iran-Contra Congresssional Report, supra, p. 342.

Robinette to install the security system.[872] Two meetings to discuss the system with North were held in May by Secord and Robinette.[873] The system was installed by a company called VATEC, which was comprised of former CIA officers, in July, and Defendant Secord paid Robinette $16,000 for the system.[874] Robinette initially said that the money was an "advance" to North, and that he hoped to "get some more business" from it.[875] Defendant Secord subsequently falsely stated to the Iran-Contra Congressional committees that he did not pay for the security system.[876]

In December of 1986, however, after a conversation with Defendant Secord, Robinette sent two back-dated

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[872]Robinette Congressional Testimony, supra, p. 10.

[873]Poindexter et al. Indictment, supra, Count 17, "Overt Acts," p. 82-3.

[874]Robinette Congressional Testimony, supra, pp. 10-28, 54-55 and 69 and Exhibits GAR-1, GAR-3, GAR-5, GAR-7A, GAR-7B, GAR-7C, GAR-7D, GAR-7E and GAR-7F. At one point, Secord paid $9,000 to Robinette for the system divided up as follows: $5,703 to VATEC, $2,173 for Automatic Door, which provided a remote control date; and approximately $1,100 for Robinette's services. The exhibits trace the $9,000 from Udall Corp. through CSF Investments to Robinette.

[875]CBS Evening News, March 16, 1987, interview with Robinette.

[876]Secord stated that "the money for the system came from the guy who put it in without any blessing from me and without any financial assistance from me." (cite)

invoices for $8,000 for the security system to Col. North. One was dated July 2, 1986, and the second was dated September 22, 1986.[877] North then sent back falsely dated responses. Neither Robinette nor Defendant Secord expected Col. North to repay them for the security system, but wanted to provide him with a "cover" story.[878]

Defendants Secord, Hakim and North were indicted in April of 1988 for the payment and acceptance of the illegal gratuities in violation of 18 U.S.C. 201(f) resulting from the installation of the security system.[879]

The Enterprise provided a larger gratuity to North in the form of financial assistance for his children's education. On March 6, 1986, Willard Zucker, an attorney associated with Defendant Hakim, met with North's wife Elizabeth in Philadelphia to make arrangements to establish a $200,000 fund for the North children. On May 20, 1986, Defendant Hakim established the fund in the name of B. Button by wiring money from an Enterprise account to CSF. Zucker informed Elizabeth North of its existence sometime later. In the fall of 1986, Zucker called David Lewis, a Washington attorney, and asked Lewis if he could pass money to the wife of a White House official that would be disguised as compensation for her services. Lewis informed the investigating Congressional committees and the special prosecutor in February of 1987. Secord and

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[877]Robinette formerly worked for the Technical Services Department of the CIA, which creates forged documents.

[878]Robinette Congressional Testimony, supra, pp. 31-41 and Exhibits GAR-8A, GAR-8B, GAR-9A and GAR-9B.

[879]Poindexter et al. Indictment, supra, Counts17-8.

Hakim were subsequently indicted for the scheme.[880]

Conspiracy to Use FDN Assets for the Benefit of the Enterprise

By 1986, the Enterprise had taken over almost completely the financial assets of the FDN. Through the Enterprise's corporations and their control of the Nicaraguan Humanitarian Aid Office in the Department of State, Defendants Secord, Clines, Owen, and Hakim, with the acquiescence of Defendant Calero, controlled their bank accounts and all purchases of both humanitarian and military supplies for the contras and their families in the field. The FDN was in no position to require an accounting from the Enterprise as to how the funds ostensibly donated to it were actually spent. The result was profiteering, the use of funds for personal purposes by the Enterprise members and their associates, and the secreting of funds in private, off-shore bank accounts.[881]

In March, Defendant Owen told North that he had heard that Defendant Calero, his brother, Mario, and

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[880]Poindexter et al. Indictment, supra, Count 18; Iran-Contra Congressional Report, supra, pp. 344-5.

[881] In February of 1986, Defendant Singlaub received an "intelligence report" from Bill Kenney. The report, which was "not favorable" to Defendant Calero and included reports on contra bank accounts in Europe and the Caribbean, and Defendants Secord and Clines. It was stolen from Defendant Singlaub's hotel room in Washington. Owen Congressional Testimony, supra, Exhibit RWO-11 (memo from "TC" [Owen] to "BG" [North], dated February 10, 1986.

Aristides Sanchez all had off-shore bank accounts. FDN officials were complaining about high airplane prices and "sweetheart deals." Owen stated that "[i]f the $100 million is approved and things go on as they have these last five years, it will be like pouring money down a sink hole."[882] Contra leaders Robelo and Cruz also expressed their concerns about corruption.[883]

Thus when Congress appropriated the $100 million in humanitarian and military aid for the contras in the summer of 1986 and it appeared that the CIA bureaucracy would once again take over the supply operation, the Enterprise and its members sought to financially benefit once again by taking assets from the FDN.

Between the time of the Congressional appropriation of new funds in June of 1986 and its effective disbursal date in October, the Enterprise began to scheme again to obtain additional funds for its private benefit and for its own future private covert operations. In July, at the behest of Defendant Secord, Dutton drafted a plan under which the Enterprise would sell the aircraft[884] and other

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[882]Owen Congressional Testimony, supra, Exhibit RWO-13 (memo from "TC" [Owen] to "BG" [North], dated March 17, 1986, entitled "Overall Perspective."

[883]Owen Congressional Testimony, supra, RWO-15 (memo from "TC" [Owen] to "William" [North], dated April 7, 1986, entitled "Recent Trip."

[884]In 1985, Oliver North stated to Felix Rodriguez that the "resistance has also purchased a number of new MAULE aircraft. . . " Rodriguez Congressional Testimony, supra, Exhibit FIR-1 (letter from Oliver North to Felix Rodriguez, dated September 20, 1985). There was no indication at that time that the Enterprise was the owner

assets in Central America it had bought with funds donated to the FDN to the CIA for approximately $4 million. These assets included over $1 million for the Point West airstrip, which was located in a country which refused to allow it to operate. The proceeds of those sales would go back to the Enterprise "into a fund for continued similar requirements."[885] North and Secord approved for buy-out plan, and North proposed it to the CIA.[886] However, it was rejected by Clair George, the deputy director for operations, who said he "wouldn't buy those planes if they were the last three planes in Central America."[887]

The Enterprise's attempt to appropriate the assets of the FDN was met with opposition by the Salvadoran military commander at Ilopango and Felix Rodriguez. In September of 1985, Rodriguez had been requested to obtain space at Ilopango from the Salvadorans and provide the security for the Enterprise to maintain their aircraft.[888] Rodriguez had been working since at least since 1983 with the Salvadoran military forces.[889] Rodriguez learned in early 1986 that Defendant Clines, who had once been

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of the aircraft.

[885]Secord Congressional Testimony, supra, Exhibit 4, p. 453.

[886]Dutton Congressional Testimony, supra, p.57.

[887]Iran-Contra Congressional Report, supra, p. 73.

[888]Rodriguez Congressional Testimony, supra, p. 229, Exhibit FIR-1 (letter from Oliver North to Felix Rodriguez, dated September 20, 1985).

[889]Rodriguez Congressional Testimony, supra, pp. 223-7.

Rodriguez's CIA case officer,[890] was connected with the Enterprise. He complained that Clines was a thief and objected to the use of the "Wilson" Enterprise to supply the contras. When Rodriguez took the C-123 to Miami and loaded it up with spare parts and medicine and transported it to El Salvador, he was threatened by North with an air piracy charge.[891]

On August 8, 1986, Rodriguez met with his old friend, Donald Gregg, Vice President Bush's security adviser; Gregg's assistant, Col. Samuel Watson; and Col. Robert Earl of the NSC. Rodriguez alleged that the Enterprise was skimming funds from the contras by (1) buying hand grenades for $3 and selling them for $9;[892] (2) being reimbursed $850 for two people operating in Costa Rica who were only being paid $250 per day; (3) overcharging for the construction of the Point West airstrip; (4) overcharging for communications equipment; (5) excessively high prices for the aircraft; (6) providing 30-year-old ammunition; (7) charging $20,000 for a gear piece; and (8) not providing appropriate safety equipment for the

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[890]Rodriguez Congressional Testimony, supra, p. 243.

[891]Iran-Contra Congressional Report, supra, p. 74.

[892]Rodriguez said he obtained this information from someone in Honduras who had met a ship loaded with contra arms and read the manifest. Rodriguez Congressional Testimony, supra, p. 288. Defendant Dell Amico met the first shipment of arms from Defendant Singlaub and GeoMiliTech, read the manifest and went to the Polish supplier to obtain the same prices. Singlaub Congressional Testimony, supra, Exhibit JKS-4 (letter from Barbara Studley to Oliver North, dated October 30, 1985).

crews.[893] Rodriguez had provided North with a letter from John Piowaty, one of the resupply pilots, after he hit a mountain and almost crashed because of inadequate equipment. Piowaty complained of poor instrumentation, lack of night vision goggles and inadequate radar capabilities. He added:

> And, finally, I demand respect for my life, the lives of my fellow crew members and some respect for those we are supposed to be supporting. I would like to think that we/you are all motivated by respect for life in this endeavor. How, then, can we be pressed into service . . . without the equipment listed above, without parachutes, without minimum survival gear, without adequate communications with the DZ, with inadequate (even withheld) intelligence, without secure communications? Is it simply greed that drives some of you to drive the rest of us?[894]

A little over two months later, the C-123 that Piowaty

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[893]Rodriguez testified that 81-millimeter ammunition manufactured in 1954 was delivered. It subsequently did not perform well in the field. Rodriguez Congressional Testimony, supra, p. 34-5 (May 28, 1987); Exhibits FIR-2 and 3 (lists of munitions and equipment taken from the warehouse at Ilopango between May 1 and September 29, 1986); Exhibit FIR-4 (undated letter of complaint about unsafe conditions from the Ilopango crews); and Exhibit FIR-5 (memorandum from Donald Gregg, dated August 8, 1966).

[894]Rodriguez Congressional Testimony, supra, Exhibit FIR-4 (undated letter from John Piowaty).

had his accident in was shot down by the contras. Only one crewman, Eugene Hasenfus, survived. He did so because his brother had provided him with a parachute before he left for El Salvador.

Rodriguez went back to the supply operation, but he and the FDN placed an FDN soldier on every flight so that the planes could not be stolen by the Enterprise.[895]

Some of Rodriguez's allegations were supported by the invoices provided to the Iran-Contra committees. In an invoice dated March 31, 1986, East, Inc., an Enterprise company, billed Lake Resources, another Enterprise company, $450 a day on a 31-day-per-month basis, or approximately $14,000 per month, for the services of men who were being paid $3,000 a month. Even after living expenses were paid, the profit to the Enterprise was almost 100 percent.[896]

The Enterprise also converted the airplanes that private donors gave to the FDN to its own use. Joseph Coors testified before Congress that he did not give $65,000 for a Maule plane to General Secord. "I gave it to the freedom fighters in Honduras."[897] North gave Coors the number of Lake Resources' Swiss bank account when Coors agreed to contribute $65,000 for the purchase of a Maule airplane for the contras. Coors was

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[895]Rodriguez Congressional Testimony, supra, pp. 285 and pp. 30-2 and 74 (May 28, 1987).

[896]Rodriguez Congressional Testimony, supra, pp. 106-8 (May 28, 1987); Exhibit FIR-1.

[897]Coors Congressional Testimony, supra, p. 115.

subsequently shown a picture of "his" Maule by North.[898] William O'Boyle contributed $130,000 for two additional Maules for the contras.[899] Nelson Bunker Hunt donated over $400,000 for both Maules and weapons.[900]

Obstruction of Justice: The Terrell-Florida Investigations

Both the press and various law enforcement agencies conducted investigations during the period of the Boland Amendment which reached certain aspects of the Enterprise's contra resupply operation. This lawsuit and the ensuing investigation also threatened to bring the illegal activity of the Enterprise to light. The Enterprise reacted to possible disclosure of its activities by using various obstruction tactics to impede investigations, thereby protecting itself from exposure.[901]

In January of 1985, at approximately the same time Jack Terrell and other mercenaries had been present at a meeting where the assassination of Eden Pastora was discussed, Defendant Owen wrote Oliver North and suggested that Terrell be shut up as soon as possible. Owen wrote:

> Would seem a good idea to deal with Flacko [Terrell] as soon as possible. Probably will not be

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[898]Coors Congressional Testimony, supra, pp. 51-2 and 101.

[899]Testimony of William O'Boyle before the Joint Committees, May 21, 1987 (hereafter "O'Boyle Congressional Testimony"), pp. 31-2. O'Boyle also testified that he intended his plane to be a donation to the contras.

[900]Iran-Contra Congressional Report, supra, p. 94.

[901]Iran-Contra Congressional Report, pp. 105-113.

> scared off as he believes he has done nothing to violate the neutrality act. If he is held probably will still move forward after he is let out, unless he can be locked up for a good long time. Best bet might be to dry up his funds, have someone talk to him about National Security and put the word out that he is not to be touched . . . Posey has been doing the best he can to either sit on Flacko, or deal him out, but that is not possible because right now Flacko knows too much and it would do no one any good if he went to the press. He has to be finessed out.[902]

North then contacted Michael Boone, an agent in the Los Angeles office of the FBI, who was already investigating allegations that Terrell was planning to violate the Neutrality Act by recruiting mercenaries to invade Nicaragua, to encourage that investigation because Terrell "would do extreme damage to the contra movement." Terrell was not arrested but North bragged to FBI agents that he had secretly arranged for Honduran security forces to evict Terrell at gunpoint from that country on March 15, 1985, apparently because Terrell was attempting to organize an anti-communist guerilla force outside of the control of the Enterprise.[903]

By late 1985, Terrell was trying to get FBI agents in New Orleans interested in the Enterprise. The Miami office was already investigating Defendant Posey and in August, it began to investigate allegations of arms and

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[902]Owen Transcript, supra, Exhibit 2 (memorandum from Robert Owen to Oliver North, dated January 31, 1985)

[903]"North Waged War on His Detractors," Chicago Tribune, August 30, 1987.

drug smuggling by the contras, particularly the March 6, 1985 shipment of arms from Fort Lauderdale to Ilopango.[904] The original source of their information was Jesus Garcia, who had been recruited by Defendant Posey and had assisted in the March 6 shipment.[905] Garcia began to talk after being prosecuted for on a weapons possession charge, and Defendant Corvo was already under investigation.[906] The suspects were Defendants Posey, Corvo, Hull, Chanes, Vidal and Jones and Sam Hall, Francisco Hernandez, Peter Glibbery, Steven Carr, Robert Thompson and Terrell.[907] Defendant Corvo and some of the others were also suspected to have participated in the bombing of the Continental Bank.[908]

On March 6, 1986, Terrell met with FBI agents and told them about many of the Enterprise's activities, including the plot to assassinate Ambassador Tambs and receive $1 million from the Ochoa drug family.[909]

On March 24, Deputy Attorney General Lowell

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[904]Deposition of Kevin W. Currier before the Joint Congressional Committees, May 5, 1987 (hereafter "Currier Congressional Deposition"), p. 6.

[905]Waas, "Obstruction at Justice," Village Voice, March 31, 1987.

[906]Feldman Deposition, supra, pp. 5-7.

[907]Feldman Deposition, supra, pp. 20 and 34.

[908]Feldman Deposition, supra, p. 34.

[909]Waas, "Ollie North's Private Dick: New Evidence of NSC Corruption, Village Voice, September 29, 1987, citing Justice Department memorandum of the interview of Terrell.

Jensen, by order of Attorney General Edwin Meese, briefed Admiral John Poindexter, President Reagan's National Security advisor, on the investigation, and the Justice Department took over control of the investigation.[910]

On March 25, 1986, Jeffrey Feldman, the assistant U.S. attorney in charge of the Florida investigation questioned Terrell for nine hours. Feldman then went to Costa Rica to interview Tambs, Joe Fernandez, the mercenaries Peter Glibbery and Steven Carr and Defendant Hull. While there, Feldman showed Tambs a chart of the supply operation with North, Owen, Hull, Jones and Jim Denby on it. Tambs "turned white," and called in Fernandez, and tried to "rip the credibility of the various people who were making the allegations."[911]

As a result, Fernandez told both persons in the CIA and North about the investigation.[912] Defendant Hull, who refused to be interviewed,[913] also called North to warn him that the entire contra supply effort was in jeopardy if the investigation continued. North contacted Admiral Poindexter, who called Attorney General Edwin

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[910]Waas, "Ollie North's Private Dick," Village Voice, September 29, 1987, citing Jensen's testimony before the Iran-contra committees.

[911]Feldman Deposition, supra, pp. 43 and 49-50.

[912]Waas, "Ollie North's Private Dick," Village Voice, September 29, 1987.

[913]Hull refused to testify based on the advice of Kirk Kotula, the U.S. consul general in San Jose. Memorandum of Jeffrey Feldman cited in "Witness the Persecution," Village Voice, November 17, 1987.

Meese. Poindexter told Meese that the investigation would endanger the arms supply network and the contra war effort. Attorney General Meese said he would "get on top of the situation" and contacted U.S. Attorney Leon Kellner. Meese did so by contacting his deputy,Oliver (Buck) Revell. Revell told Mark Richard, deputy assistant attorney general for the criminal division, to "[p]lease get on top of this DLJ [Jensen] is giving a heads up to the NSC. He would like us to watch over it. Call Kellner, find out what is up, and advise him that decision should be run by you."[914]

According to a memorandum prepared by investigators for a House judiciary subcommittee, assistant U.S. attorney David Leiwant, who met with Feldman and Kellner on April 4, Kellner stated that "Washington wanted him to go very slow on the case," because it could affect an upcoming congressional vote on contra aid.[915] Kellner repeatedly mentioned the name of Lowell Jensen.[916] In May of 1986, Feldman recommended the convening of a grand jury, but Kellner rejected that recommendation.[917]

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[914]Deposition of Mark M. Richard before the Joint Congressional Committees, August 19, 1987 (hereafter "Richard Congressional Deposition"), p. 54.

[915]Waas, "Ollie North's Private Dick," Village Voice, September 29, 1987.

[916]Waas, "Witness the Persecution," Village Voice, November 17, 1987. Leiwant is now the subject of an investigation by the Justice Department's Office of Professional Responsibility (OPR). Id.

[917]Waas, "Obstruction at Justice," Village Voice, March 31, 1987.

Kellner subsequently submitted an altered, back-dated memo, purportedly from Feldman, stating that a grand jury investigation would be a "fishing expedition" to the Senate Foreign Relations Committee.[918] The memo was also used to oppose a request from Senator John Kerry for an investigation. Sen. Kerry told the committee that he could produce law enforcement officials who would state that their drug trafficking investigations had been called off because of CIA involvement or threats to national security.[919]

Over the summer, Feldman and FBI Agent Kevin Currier did additional investigative work. They interviewed Defendant Corvo who basically admitted that there were weapons on the March 6 shipment. Nonetheless, Kellner told Feldman on August 29 that "Politics are involved . . . Politics aren't a factor for you to consider, but they are a factor for me to consider."[920] Feldman had already received "hints" from Joe Tafe, who was in charge of Neutrality Act violations at Justice.[921] When the Hasenfus plane went down, Kellner was forced into allowing Feldman to go to the grand jury.[922] He called Owen into the grand jury and was told to continue pursuing North

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[918]Feldman Deposition, supra, p. 94.

[919]"NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987.

[920]Feldman Congressional Deposition, supra, p. 105.

[921]Feldman Deposition, supra, p. 104.

[922]Feldman Congressional Deposition, supra, p. 114.

and Hull.[923] Despite the fact that this well-investigated matter has now been before a grand jury for almost 18 months and numerous witnesses and participants in the contra support operation are now afraid to talk publicly because the potential for indictment by the grand jury, not a single indictment has yet been issued.

Discrediting the Plaintiffs and Their Sources

For some time, Jack Terrell was perceived by members of the Enterprise as possessing too much information about their operation and being a potential danger. As early as January, 1985, the Enterprise was concerned that Terrell knew too much and had to be silenced. Terrell returned to the United States from Honduras in March 1985, moved to New Orleans and began to talk about his disillusionment with the contra cause and provide information to the press and law enforcement officials about the Enterprise's operation. Defendant Owen then wrote North concerning Terrell, stating: "It's time someone paid him a visit and told him to go back to the hole he comes from." Terrell claims that at this time contacts he had in the CIA told him "to keep a low profile and keep my mouth shut."[924]

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[923]Owen was an important witness for Feldman. He testified, "[A]ll of a sudden . . . I was able to put Owen at a particular meeting in Miami . . . There were many meetings . . . Let me tell you right now that Rob Owen was at tons of them. Not tons, but a significant number of meetings with players involved in both the Cuban and the CMA organizations." Feldman Congressional Deposition, supra, p. 120.

[924] "North Waged War on His Detractors," Chicago Tribune, August 30, 1987.

Approximately a year later, Terrell moved to Washington, D.C., and began talking about the operation again.[925] In March, 1986, the operation to silence Terrell was reactivated.[926] Defendant Secord hired Glenn Robinette, a former CIA officer who worked for EATSCO and Defendant Clines, to investigate Terrell and Tony Avirgan and Martha Honey, the plaintiffs in this action, and their counsel. North confirmed that he and associates used their own "security apparatus" to investigate Terrell.[927] Robinette was paid $4,000 per month from April to December of 1986, and $2,000 in March of 1987 and met once or twice a week with Defendant Secord and sometimes with Defendant Hakim.[928] The money was taken from the profits from the Iranian arms sales, which Secord said belonged to the Enterprise, and were "legitimate" business expenses because the Plaintiffs' lawsuit could have exposed the Enterprise.[929] His "investigation" included a visit to Costa Rica from November 24 to November 29 during which he spent approximately $8,000

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[925]"North Waged War on His Detractors," Chicago Tribune, August 30, 1987.

[926]Iran-Contra Congressional Report, p.112.

[927]"North Put FBI Heat on Critic," Chicago Tribune September 17, 1987.

[928]Testimony of Glenn A. Robinette, Joint Hearings on the Iran-Contra Investigation, June 23, 1987 (hereafter "Robinette Congressional Testimony"), pp. 6-9 and 73-75 and Exhibits GAR-2A, GAR-2B and GAR-2C.

[929]"Contra Funds Used to Fight Suit," Washington Post, June 29, 1987, citing an interview with Secord.

to pay people for information.[930]

In July, Terrell appeared on CBS' West 57th Street and identified Col. Oliver North was the person running the contra war. Shortly afterwards, he was contacted by Robinette, posing as a lawyer, who offered Terrell spending money under various pretexts to attempt to obtain information. Terrell was introduced to Robinette by Walter Gold, manager of the D.C.-based Washington News Network and a former director of Overseas Press Service.[931]

Based upon about eight meetings with Terrell,[932] Robinette described Terrell as "dangerous to our objectives" and suggested to North that the original "Sting" plan to produce a book, movie, etc., be abandoned in place of a plan to set up a "chopper service or air freight line in Costa Rica" for which one condition of the investors would be that Terrell stop his "political talking."[933]

As these plans were being sketched out, North put in place more direct measures to silence Terrell or at least discrediting him. In mid-1986, the FBI received a tip that

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[930]Robinette Congressional Testimony, supra, pp. 123-125.

[931]"North's 'Security Officer' Linked to Alleged Arms Network," In These Times, August 19 - September 1, 1987.

[932]Deposition of Jack Terrell, February 10, 1988 (hereafter "Terrell Deposition"), p. 90; "Inside Moves," City Paper, August 7, 1987.

[933]Undated memorandum entitled "Notes on J.Terrell-Operational Use/Threat," written by Robinette; Robinette's calendar. After his meetings, Robinette frequently met with Oliver North. Id.

Terrell was involved in an assassination attempt against the President. The timing of this tip is too coincidental to be anything other than part of the Enterprise's scheme against Terrell. Furthermore, on July 15, 1986, North spoke with Revell and for a debriefing on Terrell, put him in contact with one who was familiar with Terrell: Glenn Robinette.[934]

On July 17, 1986 North sent a memo to his superior, National Security Adviser Poindexter, portraying Terrell as a terrorist threat. The memo from North to Poindexter claimed that Terrell was conducting an active measures campaign against the contras. North claimed Terrell was a source of Congressional and media reports against the contras and that the FBI believed Terrell might be plotting to assassinate Reagan. Poindexter told North to write memo to forward to Reagan, which he did on July 28, 1986.[935]

In August 1986, two FBI agents picked up Terrell to ask him questions with regard to the alleged assassination plot. They took Terrell to the Navy yard office where he agreed to take a polygraph. They took then him to an underground room in the International building, a

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[934]Iran-Contra Congressional Report at 112. "North Waged War on His Detractors," Chicago Tribune, August 30, 1987.

[935]James Ridgeway, "Abroad at Home," The Village Voice, February 9, 1988. A White House source claimed that this procedure, informing Reagan of an assassination is highly unusual and a congressional source stated that the Iran-Contra Committee investigators were puzzled by the decision to inform Reagan. "Critic of Contras was 'Terrorist Threat,' North Told President," Washington Post, September 22, 1987.

proceeded to administer a polygraph for two entire days. After he passed the polygraph, he was excused.[936]

Such operations demonstrate how the Enterprise attempted to discredit opponents of the contra aid program and individuals who had information that could expose the Enterprise.[937] As was stated in the Report of the Congressional Committees Investigating the Iran-Contra Affair, it is clear that Oliver North, with Defendant Secord, "instigat[ed] and intensifi[ed] investigations of people and organizations perceived as threats to the Enterprise."[938]

The Southern Air Transport Investigation

On October 5, 1986, an arms-laden, C-123 cargo jet owned by Southern Air Transport crashed inside Nicaraguan territory. Two American pilots, William Cooper and Wallace Sawyer, died, but a "kicker", Eugene Hasenfus, survived.[939] The log of a co-pilot killed in the crash listed two visits of a Southern Air Transport plane to Barranquilla, Colombia, in October of 1985. A secret witness, who had offered a "proffer" to the Senate Foreign Relations Committee, stated that she had witnessed a transaction involving a plane clearly marked as a "Southern Airways" during which U.S. guns were exchanged for drugs in Barranquilla in October of 1985. That information was

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[936]Terrell Deposition, p. 132-136.

[937]Iran-Contra Congressional Report, p. 113; "Critic of Contras was 'Terrorist Threat,' North Told President," Washington Post, September 22, 1987.

[938]Iran-Contra Congressional Report, supra, p. 112.

[939]"Closing In On Meese," Village Voice, April 21, 1987.

provided to the FBI before the October crash in Nicaragua.[940]

The Federal Aviation Administration and the U.S. Customs Service began an investigation into the crash and Southern Air Transport. When Customs served a subpoena on Southern Air Transport for documents relating to the crash, SAT President Bill Langton contacted Robert C. Dutton, who was working with Defendant Secord, to warn him that "if they got into accounting records . . . they would come across other operations that Southern Air had been supporting." Langton further stated that "it would not be the desire of the people [in Washington] to have those operations exposed, and so possibly they should be made aware of that." Dutton, representing Defendant Secord, immediately called Oliver North and conspired to obstruct investigation. North told Dutton to call Langton and "tell him I will take care of it." The next day, Langton called Dutton again and stated that the FAA and Customs were "pressing" for the information. Dutton called North, who told Dutton that he [North] had spoken to Attorney General Edwin Meese, "and that it would be taken care of."[941] Dutton called Langton with that information, "and the Customs and FAA people went away." North also called William Rosenblatt, assistant Customs commissioner. As a result,

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[940]"NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987. The witness is a U.S. citizen, known as "Wanda Doe", who is married to a Colombian drug trafficker.

[941]Testimony of Robert C. Dutton, Joint Hearings on the Iran-Contra Investigation, May 27, 1987 (hereafter "Dutton Testimony"), pp. 97-9.

Customs narrowed its investigation.[942]

A second investigation of Southern Air Transport was initiated by the FBI, but it also was halted through the intervention of Dutton and Defendant Secord. Dutton testified that he advised Col. North of this investigation also. North stated that he would "take care of that," and the investigation was delayed.[943] North discussed the FBI investigation of Southern Air Transport with his boss, Admiral John Poindexter, and Poindexter once again called Attorney General Meese to request a delay in the FBI's investigation. Meese contacted FBI Director Webster, and the delay was granted. Meese also called Treasury Secretary James Baker to discuss Customs' investigation.[944]

In January of 1987, information about "Wanda Doe", an FBI informant with eyewitness evidence of the connection of Southern Air Transport and Defendant Ochoa's drug trafficking operations was leaked to the Washington Times, allegedly by the Justice Department. Doe was forced into hiding.[945]

The Stealth Boat Investigation

Sometime after August of 1985, Karl Phaler, owner of Freedom Marine, sold three stealth boats to Defendant Singlaub for the contras. In the next year, the U.S. Customs Service began an investigation to determine

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[942]"Closing In On Meese," Village Voice, April 21, 1987.

[943]Dutton Testimony, supra, p. 99.

[944]"Closing In On Meese," Village Voice, April 21, 1987.

[945]"NSC, CIA, and Drugs: The Cocaine Connection," Covert Action Intelligence Bulletin, Summer 1987, citing interview with Doe's attorney.

whether criminal acts were involved in this transfer.[946] In the middle of the investigation, some of the defendants contacted Col. Oliver North or other members of the executive branch to halt the investigation of Freedom Marine and the sale of the stealth boats.[947]

The Maule Aircraft Investigation

In the summer of 1986, the Customs Service began investigating allegations that Maule Aircraft Corporation had shipped four aircraft to the contras in violation of U.S. export laws. The aircraft were purchased by Defendant Secord for use in his supply operation. In August, North, upon the suggestion of Defendant Secord, approached Customs Commissioner William von Raab and told von Raab that Customs agents were giving Maule a "hard time." Von Raab turned the investigation over to William Rosenblatt, assistant commissioner for enforcement. North told Rosenblatt that Maule sold only "super Piper Cubs" to a Central American country for humanitarian purposes, but promised to provide the documents Customs needed. Rosenblatt postponed the issuance of subpoenas based upon North's representations.[948]

North and Secord were able to hold off the investigation for several months. In November, North

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[946]Draft memo from Justice Department released by Iran-contra committees. Need to find it."The Case of the 'Stealth" Boats," The Nation, January 9, 1988.

[947]"The Case of the 'Stealth' Boats," The Nation, January 9, 1988.

[948]Iran-Contra Congressional Report, supra, p. 105.

finally produced some documents, but they were not those requested. The investigation finally resumed in November.[949]

The Kelso Investigation

In the spring of 1986, Joseph Kelso, who was working for the Customs Service, went to Costa Rica to investigate the involvement of DEA agents there in drug trafficking and counterfeiting operations. In the course of his investigation, Kelso was detained and questioned and ultimately returned to the United States, where he told authorities he had been working for both Customs and the "intelligence community" and turned over to Customs tapes describing his work.[950]

Defendant Hull knew about Kelso and his investigation because Kelso had come to Hull's ranch and was later detained by Costa Rican authorities there. In August of 1986, Hull wrote a letter to Owen asking Owen to look into the Kelso matter. Owen went immediately to North because of some concern about Plaintiffs' lawsuit.[951] North had already received cables from Tambs who was angry about Kelso investigating "his" agents.[952]

Owen -- representing himself as working for the Institute on Terrorism and Subnational Conflict[953] -- then called the U.S. Customs Office in Denver, and spoke with

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[949]Iran-Contra Congressional Report, supra, p. 106.

[950]Iran-Contra Congressional Report, supra, p. 106.

[951]Owen Deposition, supra, pp. 18-9 and 29-31.

[952]Owen Deposition, supra, pp. 123-4.

[953]Owen Deposition, supra, pp. 156-8.

Gary Hillberry, the agent in charge, about Kelso. At some point, Owen became aware of some tape recordings that Kelso had made concerning his investigation.[954] Hillberry's superior, William Rosenblatt, chief of enforcement for Customs, had earlier spoken with North, and agreed to give the tapes to Owen, believing that Owen was an NSC employee or otherwise working with North.[955] The transfer of tapes occurred although Hillberry knew of Kelso's concern that the tapes not fall into the wrong hands.[956]

Owen listened to some of the tapes and made notes on them. Sometime during the week of November 24-28, 1986. Despite the fact the tapes were part of a government criminal investigation, Owen threw the tapes out as he was preparing to move.[957] happened at the same time as North was shredding huge piles of documents. What was contained in them was significant enough for Owen to have made two trips to Costa Rica to do further investigation, one in August and October of 1986.[958]. Owen has claimed attorney work product privilege concerning those trips, claiming they were done to investigate this lawsuit.[959] He met with Robinette a

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[954]Owen Deposition, supra, pp. 37-44.

[955]Iran-Contra Congressional Report, supra, p. 106.

[956]Owen Deposition, supra, pp. 121-3.

[957]Owen Deposition, supra, pp. 144-7.

[958]Owen Deposition, supra, pp. 129-30.

[959]Owen Deposition, supra, pp. 130-2.

number of times to discuss the lawsuit and Kelso.[960]

SECOND IRANIAN VENTURE

From late 1985 through 1986, Enterprise principals exploited and corrupted a United States Government initiative in the Middle East. The initiative involved the sale of arms to groups in Iran and efforts to obtain the release of American citizens held hostage in Lebanon. The Enterprise conspired to defraud the United States and violated other federal laws by engaging in such racketeering activities as wire fraud, in order to raise funds for the Enterprise and to divert a portion of the profits to the Nicaraguan contras.[961] Members of the Enterprise also took steps to insure that information concerning their off-the-shelf criminal activities in Iran, obtained by a pro-Iranian terrorist group through the torture of American hostage William Buckley, was not revealed.

Revolution in Iran

The Iranian revolution of 1979 ended the reign of the Shah, Mohammed Reza Pahlevi, and 25 years of close ties between Iran and the United States. The Ayatollah Khomeini's Shiite Muslim clergy, which the Shah had excluded from the political process and prohibited from exercising any secular power, formed a new government in

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[960]Owen Deposition, supra, p. 395.

[961]United States District Court for the District of Colombia, United States v. John M. Poindexter, Oliver L. North, Richard V. Secord and Albert Hakim, Defendants. Indictment by Grand Jury Sworn in on January 28, 1987 (hereafter, "Poindexter, et al., Indictment"), pp. 17, 41-42.

February 1979.[962] From that time onward, relations between the government of the United States and the government of Iran were characterized by mutual hostility and tension.[963]

Iranian Seizure of U.S. Embassy Leads to Arms Embargo

On November 4, 1979, the U.S. Embassy in Tehran was seized by pro-Khomeini forces, and 66 American diplomats were held hostage until January 1981. The U.S. government retaliated by freezing all Iranian government assets in the United States, breaking diplomatic relations, blocking the transfer of Iranian government property and imposing a trade embargo. As part of the embargo, all U.S. arms shipments to Iran were prohibited.[964]

Although the eventual release of the American diplomats was achieved by reversing some of these retaliatory measures, the arms embargo remained in force. The embargo proved particularly costly to the government of Khomeini, which became engaged in a full-scale war of attrition after Iran was attacked by Iraq, Iran's neighbor to the west, on September 22, 1980. Iran's need for American spare parts and weapons arose from the Shah's Americanization of the Iranian military.[965]

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[962]The Report of the Congressional Committees Investigating the Iran-Contra Affair, November 1987 (hereafter "Iran-Contra Report"), p. 157.

[963]Poindexter, et al., Indictment, supra, p. 5.

[964]Iran-Contra Report, supra, p. 157.

[965]The Shah had been allowed considerable access to U.S.-manufactured advanced weaponry. While this meant the Shah was able to build up a considerable military force, it

Operation Staunch

On December 14, 1983, the United States Government initiated Operation Staunch, a program to persuade other nations to join in the embargo of arms sales to Iran. Countries were urged to stop shipments of arms to Iran "because of the broader interests of the international community in achieving a negotiated settlement to the Iran-Iraq war."[966]

Yet the U.S. Government was aware of Iran's need for American military hardware, and recognized that it had lost an important ally in a strategically critical region of the world with the fall of the Shah. Members of the executive branch of the U.S. Government therefore considered the possibility of establishing ties with the Khomeini government.[967]

Terrorism

On January 20, 1984, in response to an outbreak of terrorist acts against United States targets, U.S. Secretary

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also caused Iran to depend heavily on the U.S. for weapons and replacement parts in order to maintain its military strength. Marshall, Scott and Hunter, supra, p. 150.

[966]Iran-Contra Report, supra, p. 159.

[967]"Reports persisted that Israel still actively supplied the Iranian military despite the US efforts to stop arms sales through Operation Staunch. Other reports hinted that US and Israeli representatives met regularly to discuss Tehran's war needs. Widespread reports, particularly from the Middle East, also suggested that the United States was violating its own arms prohibitions." Iran-Contra Report, supra, p. 159.

of State George Shultz named Iran as one of several nations espousing and sponsoring international terrorism. Four days later, the Administration announced that Iran would be subject to U.S. Government regulations limiting the export of U.S. military equipment to "countries that have repeatedly provided support for acts of international terrorism."[968]

Hostages in Lebanon

Beginning in March 1984, a number of Americans were taken hostage in Lebanon. Three Americans were seized in Beirut in 1984, including CIA station chief William Buckley. The State Department, citing Iranian support for such terrorist acts, imposed further restrictions on the export to Iran of aircraft, aircraft spare parts, and other military goods and technology. Four more Americans were taken hostage in 1985.[969]

William Buckley was the CIA station chief in Beirut. More significantly, he directed anti-terrorist activities for the CIA worldwide. He was kidnapped on March 16, 1984, by members of the pro-Khomeini Lebanese faction of the Hizbollah.[970]

A former associate of Defendant Shackley, Buckley was privy to information regarding the Enterprise's involvement

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[968]Iran-Contra Report, supra, p. 160, citing 15 C.F.R. Section 385.4(d).

[969]Iran-Contra Report, supra, p. 160.

[970]The National Security Archive, Secret Military Assistance to Iran and the Contras: A Chronology of Events and Individuals, July 6, 1987, p. 62, citing Miami Herald, December 7, 1986 and Los Angeles Times, January 21, 1987.

in assassinations in Iran.[971] Buckley's capture was therefore of great concern to members of the Enterprise, especially after they learned that Buckley was being tortured to gain information. Anxious to obtain Buckley's freedom, Defendant Shackley took steps to cause the Reagan Administration to begin negotiations with Iran for Buckley's release. It was later confirmed that Buckley had been tortured to death, and that a 400-page video-taped confession had been extracted from him.[972]

Shackley-Ghorbanifar Meeting

Upon his retirement from the CIA in 1979, Defendant Shackley set up a "risk management" firm named Research Associates, Inc., which shared office space with two other Enterprise companies: SSI and IRT.[973] Through Research Associates, Shackley had maintained contact with the former head of the Shah's SAVAK counterespionage Department VIII, General Manucher Hashemi.[974] Through Hashemi, Shackley was able to meet with a group of Iranians in Hamburg, West Germany, in November 1984. This group included Manucher Ghorbanifar, an Iranian agent living in Paris; an Iranian official known as

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[971]Wilson Statement, supra, p. 160.

[972]Cockburn, supra, p. 200.

[973]"Ex-CIA Agent's Associates Run Arms Export Concern," New York Times, September 6, 1981.

[974]From 1980 to 1983, Shackley had served as a consultant to Stanford Technology Corp., Defendant Hakim's firm, which had picked up several electronic intelligence contracts in Iran. Marshall, Scott, and Hunter, supra, pp. 28, 157.

the "First Iranian"; and Dr. Shahabadi, chief of the Iranian purchasing office in Hamburg and a friend of Saudi arms dealer Adnan Khashoggi. At one of the group's meetings, Ghorbanifar told Shackley that he had contacts through which a ransom deal could be arranged for the release of the U.S. hostages in Lebanon, specifically William Buckley.[975] Ghorbanifar, the First Iranian and Khashoggi would all play major roles in later arms deals.

Upon his return to the U.S., Shackley sent a memorandum on his meetings with the Iranians to Lt. Gen. Vernon Walters, ambassador-at-large in the State Department. Walters passed the memo on to Hugh Montgomery, director of intelligence and research in the State Department; Robert Oakley, head of State Department counterterrorism efforts; and Richard Murphy, assistant secretary of state for Near Eastern Affairs.[976] On December 11, 1984, Montgomery informed Shackley that the State Department was not interested in pursuing the Ghorbanifar proposal.[977] Although the proposal was rejected, Shackley's meeting with Ghorbanifar paved the way for the later secret negotiations for the release of William Buckley.

In May 1985, Shackley met with Michael Ledeen, who

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[975]Iran-Contra Report, supra, p. 164.

[976]It appears that there were other meetings in Hamburg at this time that Shackley did not report. One was with British arms dealer Leslie Aspin and another was with Lt. Col. Oliver North. Cockburn, supra, pp. 195-196.

[977]Iran-Contra Report, supra, p. 164, citing interviews with Theodore Shackley (February 27, 1987) and Hugh Montgomery (March 4, 1987) and "The Report on American Hostages in Lebanon" (December 22, 1984).

in his official capacity was a consultant on terrorism to the National Security Council. Shackley and Ledeen discussed Shackley's Hamburg meeting and the possibility of working out a deal with Ghorbanifar. By the late summer or early fall of 1985, the pieces were in place for arms deals with Iran.[978]

Arms Transactions

The Report of the Congressional Committees Investigating the Iran-Contra Affair (hereafter "Iran-Contra Report") identifies six separate arms sales to Iran. These shipments began in the summer of 1985 and concluded in October 1986, just before the Iran arms initiative and the diversion of funds to the Nicaraguan contras were made public. The Enterprise's activities in the arms sales initiative involved violations of federal law, including a conspiracy to defraud the United States Government.

Arms Sale #1 - August 1985, 96 TOWs for zero hostages

The first transaction, in August 1985, involved the sale of 100 TOW missiles in return for the release of an undetermined number of U.S. citizens held hostage in Lebanon. The missiles were to be provided from the weapons stock of the Israeli Defense Forces. The U.S. agreed to replenish the Israeli weapons stock after the transaction with Iran was completed.

On August 20, 1985, a DC-8 transport aircraft flew from Israel to Iran loaded with 96 TOW missiles (rather than the agreed-upon 100). Ghorbanifar was on the flight. Contrary to the agreement, no hostages were released.

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[978] Marshall, Scott, and Hunter, supra, p. 156. According to Senator Cohen, the memo Shackley wrote was rewritten on June 7, 1985 and given to Michael Ledeen, who handed it on to Oliver North.

Ghorbanifar contended that the TOWs were mistakenly delivered to the Commander of the Iranian Revolutionary Guard rather than to the Iranian faction for whom they were intended.[979]

On August 27, 1985, the government of Iran transferred $1,217,410 to Ghorbanifar's Swiss bank account.[980]

Arms Sale #2 - September 1985, 408 TOWs for 1 hostage

Despite the failure of the first arms transaction, the Iran initiative was continued. Negotiators agreed that the U.S., through Israel, would provide Iran with 400 TOW missiles. In return, the Iranians would arrange for the release of any U.S. hostage except Buckley. The transaction was to take place in the same manner as the first: Israel would provide the missiles, and the U.S. would later replenish the Israeli supply. Lt. Col. Oliver North, on the staff of the National Security Counsel in his official capacity, was to make the necessary arrangements to receive any hostages who might be released.[981]

On September 15, a DC-8 loaded with 408 TOWs flew to Tabriz, Iran. On the same day, American hostage Benjamin Weir was released in Beirut.[982] On information and belief, this transaction was effected to demonstrate the ability of the negotiators on each side to deliver--by providing TOW missiles and releasing Buckley, repectively.

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[979]Iran-Contra Report, supra, p. 168

[980]Iran-Contra Report, supra, p. 168.

[981]Iran-Contra Report, supra, p. 169.

[982]Iran-Contra Report, supra, p. 196.

On September 17, Ghorbanifar paid $290,000 to the Israeli intermediary to cover the costs of transporting the TOWs. The following day, Iran paid $5 million into Ghorbanifar's Swiss bank account.[983]

Arms Sale #3 - November 1985, HAWKs

The third arms transaction was again largely dependent upon the use of Israeli intermediaries. Ghorbanifar told the U.S. and Israeli negotiators that Iran now wanted HAWK anti-aircraft missiles. A deal was worked out to ship a total of 80 HAWKs from Israel to Iran. In order to prevent public exposure of the initiative, the HAWKs were to be sent from Israel to a third country (identified in the Iran-Contra hearings as Country 15, and assumed to be Portugal), and subsequently transferred from that country to Iran.[984]

The leader of Country 15, however, was hesitant to comply with the request, both because the Iran initiative stood in direct contradiction to stated U.S. policy, and because of the unprofessional approach taken by U.S. representatives of the initiative in seeking permission to use Country 15 as a transshipment point for the HAWKs. This government leader asked for a detailed diplomatic note from U.S. government representatives, explaining the initiative, the role of the U.S. in the initiative, and the need for Country 15's assistance. The Enterprise was ultimately unable to provide this note.[985]

The Enterprise Becomes Involved

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[983]Iran-Contra Report, supra, p. 169.

[984]Iran-Contra Report, supra, p. 178-179.

[985]Iran-Contra Report, supra, p. 179.

On November 18, 1985, Lt. Col. Oliver North contacted Defendant Richard Secord to enlist the Enterprise's assistance with this transshipment. North had recently been put in charge of the Iran initiative by Robert C. McFarlane, who in his official capacity was National Security Adviser until December 1985.[986] At the time, North was already involved in other Enterprise criminal activities, including the unlawful operations in support of the contras in Nicaragua. Secord later testified that this was the first he knew of the Iran arms initiative.[987]

Also on November 18, North arranged for the transfer of $1 million from the Israeli intermediaries into the account of Lake Resources, a Panamanian company controlled by the Enterprise. The transfer was completed on November 20. Prior to this transfer, Secord and North had used the company exclusively as a front for supporting the contras.[988]

Lake Resources was the principal corporation used by the Enterprise. Primarily through Defendant Hakim in coordination with North and Defendant Secord, the Enterprise developed a "clandestine financial

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[986]Iran-Contra Report, supra, p. 177.

[987]Joint Hearings before the House Select Committee to Investigate Covert Arms Transactions with Iran and Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposiition (hereafter "Iran Contra Hearings"), Testimony of Richard Secord, May 5, 1987 (U.S. Government Printing Office edition), 100-1, p. 41 .

[988]Iran-Contra Report, supra, p. 179. Lake Resources and its account at Credit Suisse in Geneva, Switzerland had been established by North and Secord in May 1985 to receive money in support of the covert operations.

infrastructure." The secret infrastructure consisted of foreign corporations and Swiss bank accounts previously under Hakim's control, newly created foreign corporations and additional Swiss bank accounts. Numerous wire transfers of funds into and out of these accounts were conducted by the Enterprise in the course of this operation.[989]

The Enterprise became involved in the Iran arms deals, using the same modus operandi and players as in its previous ventures.[990] According to the Iran-Contra Report:

> "Secord consistently turned to the same group of individuals to accomplish the tasks that North assigned to him. Albert Hakim... was his partner

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[989]Poindexter, et al., Indictment, supra, p. 14. By November 1986, the financial network of the Enterprise included the following foreign corporations and bank accounts: Hyde Park Square Corp., Dolmy Business Inc., Albon Values Corp., Gulf Marketing Consultants, Ltd., Toyco Inc., Udall Research Corp. and Defex S.A. Id.

[990]The Secord-Hakim-Clines Enterprise referred to in the Congressional Iran-Contra investigations is alleged to be only a part of the Defendants' criminal racketeering Enterprise. Hakim described this venture as a covert organization with a chain of command headed by North, and also as a chain of Swiss accounts which he set up and partially owned. Secord described it as the group of offshore companies that carried out the Iran-Contra operations, and conceded that it was fair to describe it as his own covert operations organization. Iran-Contra Report, supra, p. 327, citing testimony by Hakim and Secord.

> and, by agreement, Secord and Hakim were to share equally in any Enterprise profits. Hakim controlled the Enterprise's bank accounts. Rafael Quintero... handled the logistics of arms deliveries from various locations in Central America. Glenn Robinette... investigated those who made accusations about operations of the Enterprise and performed other tasks... Thomas Clines... served as the primary broker for the Enterprise's arms transactions.
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> "The relationships were not new. Secord had been in contact with the group throughout his career; apparently he trusted these individuals and they trusted him..."[991]
>
> "The Enterprise was involved in every NSC-connected shipment of weapons to Iran from November 1985 on. The net surplus generated by these transactions for the benefit of the Enterprise was $16.1 million."[992]

On November 20, Secord arrived in Country 15. Secord and his associate, Defendant Thomas Clines (who, according to Secord's testimony, "had really been handling all of the matters for the Enterprise" in Europe) started "to work the problem . . . through our colleagues in the armaments industry . . ." [993] Despite the efforts of Secord, Clines and the other participants in the Iran initiative,

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[991] Iran-Contra Report, supra, p. 327.

[992] Iran-Contra Report, supra, p. 341.

[993] Secord Testimony, supra, May 9, 1987, p. 209.

Country 15 refused to permit trans-shipment, and another route had to be established.

On November 24, 18 HAWK missiles were delivered from Israel to Iran, the first of several shipments totalling 80 HAWKs. After leaving Iran for Israel to pick up a second load of HAWKs, however, the plane was directed not to return to Israel because of problems arising in Washington and Iran. The airline's role in the HAWK transfer was discontinued; Secord wired a $127,700 payment to the airline from funds in the Lake Resources account. None of the remaining 62 HAWKs was delivered, and no hostages were released.[994]

Another problem developed. The Iranians were dissatisfied, both because they had received older-model HAWKs incapable of meeting their needs, and because many of those HAWKs bore Israeli markings, which they took as an insult. The Iranians requested that the 18 HAWKs be retrieved from them.[995]

North and Secord testified that the $1 million deposit into the Lake Resources account, made by Israeli businessman Al Schwimmer, was to cover the cost of chartered planes to deliver the 80 HAWKs to Iran.[996] Yet that contention appears unlikely, because at the time of the deposit, the Enterprise's assignment was simply to obtain landing clearances for planes already chartered by

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[994]Iran-Contra Report, supra, p. 185, citing Airline Proprietary Receipt Records, 11-29-85 and 12-3-85, CIIN 2581 and 2587.

[995]Iran-Contra Report, supra, p. 187

[996]Secord Testimony, supra, May 5, 1987, pp. 80-84.

Schwimmer.[997]

The Select Committees investigating the Iran-contra affair later ascertained that, of the $1 million, Secord paid approximately $150,000 for aircraft to carry HAWKs to Iran. This left a net of $850,000, part of which was diverted to the Nicaraguan contras. The remainder was disbursed as profit to Secord and his Enterprise associates, Defendants Albert Hakim and Thomas Clines. This represented the first diversion of funds from the Iran arms initiative to the contras.[998]

The Diversion

On December 6, 1985, North met with Israeli officials in New York to discuss a plan to use profits from the upcoming arms sale to Iran to fund operations in support of the contras in Nicaragua. On the same day, North went to London to meet with Secord, Ghorbanifar, Schwimmer, David Kimche, former director general of Israel's Foreign Ministry, and Yaacov Nimrodi, former Israeli defense attache to Iran, to discuss the sale of TOWs to Iran. On December 8, McFarlane flew to London to join the discussions. On December 9, McFarlane, Secord and North returned to Washington. North then proposed a direct sale to Iran by the U.S., using Secord as an operational "conduit."[999]

A criminal indictment, handed down in March 1988 by the grand jury supervised by Independent Counsel

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[997]Iran-Contra Report, supra, p. 179.

[998]Iran-Contra Report, supra, p. 179, citing "Financial Chronology, Accounting Workpaper;" Poindexter, et al., Indictment, supra, p. 19.

[999]Iran Contra Report, supra, p. 199.

Lawrence Walsh, charges that certain Enterprise conspirators, including Secord, were responsible for the shipment of thousands of pounds of lethal military supplies to Central America for use by the contras in December 1985.[1000]

The activities of the Enterprise in engineering the diversion of funds to the contras represent a conspiracy to defraud the United States by obstructing its lawful government functions, by "deceitfully and without legal authorization organizing, directing and concealing a program to continue the funding of the logistical and other support" for the contras during the time that "the prohibitions of the Boland Amendment and other legal restrictions on the execution of covert actions were in place."[1001]

This conspiracy to defraud the United States Government was furthered by the Enterprise's exploitation of the November arms deal, as well as the remaining arms transactions described below, for its own purposes. The Enterprise was thereby "corrupting a United States Government initiative...rather than pursuing solely the specified governmental objectives of the initiative."[1002]

Arms Sale #4 - February 1986, 1000 TOWs

Despite the problems with the HAWK transaction and the failure to secure the release of the hostages, the Enterprise began plans for another arms deal. This time, however, North sought to deal directly with the Iranians, using weapons from U.S. stocks and relegating the Israelis

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[1000]Poindexter, et al., Indictment, supra, p. 19.

[1001]Poindexter, et al., Indictment, supra, p. 9.

[1002]Poindexter, et al., Indictment, supra, pp. 9-10.

to a minor role. This provided the opportunity to generate more profits on the sale of weapons, to be used for the other racketeering activities of the Enterprise, including its illegal support for the contras.[1003] This arrangement was also, on information and belief, intended to ensure that the Iranians would remain silent about the off-the-shelf activities revealed to the pro-Iranian terrorist group by Buckley during his tortured confession.

The Enterprise's Role Expands

The role of the Enterprise in the Iran initiative changed significantly when National Security Adviser John Poindexter and North arranged in January 1986, for Secord to participate in a second transaction.[1004] Beginning with the February 1986 transaction, the Enterprise played a more active role in all facets of the Iran initiative, from negotiation of arms deals to distribution of funds.[1005]

The Independent Counsel's criminal indictment charges that, in January 1986, Poindexter and North arranged for Secord, and through him the Enterprise, "to assist the United States initiative to Iran by acting as an agent and intermediary of the United States Government,... to receive

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[1003]Iran-Contra Report, supra, p. 193. On January 4, 1986, North wrote a memo to John Poindexter, who succeeded McFarlane as national security adviser on December 4, 1985, stating that he believed the sale of U.S. weapons by Israel to Iran would violate the Arms Export Control Act. Iran Contra Report, supra, p. 202, citing "memo from North to Poindexter, subject: Covert Action Finding on Iran, 1-4-86."

[1004]Secord Testimony, supra, May 6, 1987, p. 96.

[1005]Iran-Contra Report, supra, pp. 193-209.

for the United States funds in payment of the weapons to be shipped to Iran, to transmit funds to the CIA and to transport weapons from the United States to Iran." The use of the Enterprise to fill this role "created circumstances under which the Enterprise [was] able secretly to control the proceeds from the sale of arms to elements in Iran and divert a substantial part of such proceeds into the financial network of the Enterprise... thereby depriving the United States of the honest and faithful services of employees free from conflicts of interest, corruption and self-dealing."[1006]

The Plan to Sell TOWs

The February 1986 arms deal, negotiated by Oliver North on behalf of the Enterprise, and an Iranian representative, involved the transfer of 4,000 TOWs to Iran at a price of $10,000 per missile. The TOWs were to be shipped to Iran in increments of 1,000.[1007] On information and belief, the deal also included an agreement on behalf of the Iranians not to reveal the information they learned from Buckley's confession about the Enterprise's off-the-shelf activities.

On January 29, 1986, North held a meeting in the Old Executive Building with Secord, Noel Koch, who in his official capacity was Deputy Assistant Secretary of Defense under Richard Armitage, and Charles Allen, who in his official capacity was CIA National Intelligence Officer. At the meeting, the group decided that the TOWs would be transported from a domestic storage facility to Kelly Air Force Base in Texas, where Secord would accept delivery and ship them via Southern Air Transport to Israel.

[1006] US v. Poindexter, et al., Indictment, supra, pp. 19-20.

[1007] Poindexter, et al , Indictment, supra, p. 20.

Secord would then arrange for the cargo to reach Bender Abbas, Iran from Tel Aviv.[1008]

Pricing

Ghorbanifar, acting as middleman, agreed to pay $10,500 for each TOW (roughly $10 million for the first 1,000). Ghorbanifar arranged for Saudi arms dealer Adnan Khashoggi to advance the $10 million, which was deposited into Lake Resources Credit Suisse account.[1009]

Defendant Secord and Oliver North agreed, in early 1986, "to retain for the Enterprise a substantial part of the $10 million payment for the first shipment of TOW missiles by having Defendant Secord transmit to the United States substantially less than was paid for these missiles on behalf of the Iranians."[1010] As part of this plan, North claimed that a price of $6,000 per TOW was too high a payment for the Enterprise to make, and that the price should be lowered. North knew at the time that the Iranian middleman was willing to pay the Enterprise $10,500 per TOW.[1011]

The pressure from Enterprise members to lower the price on the TOWs, combined with irregular billing procedures, brought the final payment to $3,469 per TOW purchased from the Department of Defense; this represented less than half the normal price.[1012]

[1008] Iran-Contra Report, supra, p. 217.

[1009] Iran Contra Report, supra, p. 217; Cockburn, supra, pp. 203-204.

[1010] Poindexter, et al., Indictment, supra, pp. 20-21.

[1011] Poindexter, et al., Indictment, supra, pp. 20-21.

[1012] Iran-Contra Report, supra, p. 215.

The Enterprise directed that only $3.7 million be transmitted for the TOWs. Thus, on February 10, 1985, $1.85 million was transferred to a U.S. Government Swiss account from the Enterprise's Credit Suisse account, Lake Resources. The next day, an additional $1.85 million was transferred. The $3.7 million was then paid to the Department of Defense for 1,000 TOWs.[1013]

Profit

The February sale of TOW missiles generated a $10 million gross payment to the Enterprise. Of this amount, $3.7 million was transmitted to the U.S. Government to pay for the TOWs. Lake Resources made approximately $6.3 million net profit on the TOW shipment.

Funds from the inflated profit margin created by the Enterprise's underpayment to the U.S. government and overcharge to the Iranians were then used by the Enterprise to "purchase and deliver military weapons and supplies for the Contras," and for the personal enrichment of members of the Enterprise.[1014] Secord determined the final distribution of profits from the initiative, after discussions with North.[1015]

Shipment

On February 17, an Israeli-chartered plane piloted by a crew working for the Enterprise delivered 500 TOWs to Bender Abbas, Iran, and returned to Tel Aviv with the HAWK missiles previously rejected by Iran. The next day, Secord transmitted a message to North describing the

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[1013]Iran-Contra Report, supra, p. 217.

[1014]Poindexter, et al., Indictment, supra, p. 21.

[1015]Secord Testimony, supra, May 7, 1987, p. 110.

delivery.[1016]

On February 27, a second Israeli plane, arranged by Secord and piloted by a crew under his supervision, delivered another 500 TOWs to Bender Abbas, Iran.[1017]

In March and April 1986, Enterprise members, including Defendant Secord, arranged for additional shipments of thousands of pounds of lethal military supplies to be delivered to Central America for use by the contras.[1018]

Arms Sale #5 - May 1986 - HAWK spare parts

On April 14, 1986, Ghorbanifar relayed a new Iranian demand for a meeting in Iran and for delivery of HAWK spare parts in return for the release of the hostages.[1019] It was agreed that the Enterprise would secure a price for the Iranians of $15 million for the spare parts. In order to determine the price, North instructed an assistant to calculate the price to be charged by the Enterprise by multiplying by a factor of 3.7 the official U.S. government prices for the spare parts.[1020]

In May 1986, North directed financiers working on behalf of the Iranians to deposit $15 million into an Enterprise bank account. An additional deposit of $1.46 million was made to the Enterprise account, to cover 508 additional TOWs which were to be provided to Israel as

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[1016]Secord Testimony, supra, May 7, 1987, p. 106.

[1017]Secord Testimony, supra, May 7, 1987, p. 109.

[1018]Poindexter, et al., Indictment, supra, pp. 21-22, 33-34.

[1019]Iran-Contra Report, supra, p. 227.

[1020]Poindexter, et al., Indictment, supra, p. 22.

replenishment for the previous Israeli TOW shipments. Of the approximately $16.5 million the Enterprise received for this hardware, the Defendants caused only $6.5 million to be paid to the United States Government to cover the cost of the HAWK spare parts and the 508 TOWs, leaving a profit for the Enterprise of almost $10 million.[1021]

On May 22, a Southern Air Transport 707 plane landed in Israel, loaded with thirteen pallets of HAWK missile spare parts for delivery to Tehran. On May 24, a second 707 arrived in Israel with 508 TOW missiles for Israeli replenishment of arms delivered earlier to Iran. In Israel, twelve pallets of the HAWK spare parts were loaded into a disguised Israeli Air Force 707.[1022]

On May 25, 1986, a delegation headed by McFarlane and including North left Israel for Tehran on a plane carrying one pallet of the HAWK spare parts. As part of the plan, Defendant Secord remained in Israel with the 707 loaded with the additional twelve pallets of spare parts. Secord stood ready to deliver them to Iran, upon receiving word from the delegation.[1023] The delegation had firm instructions not to transfer any more weapons to Iran until all the hostages had been released.[1024]

The Iranians, however, did not release the hostages. At the end of three days of negotiations, the Iranians offered the U.S. delegation the release of two hostages in return for the delivery of the remaining 12 pallets of HAWK spare parts. North was ready to accept the offer,

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[1021] Poindexter, et al., Indictment, supra, pp. 22-23.

[1022] Iran-Contra Report, supra, p. 232.

[1023] Iran-Contra Report, supra, p. 232.

[1024] Iran-Contra Report, supra, p. 237.

but McFarlane refused; and the delegation left Tehran.[1025]

McFarlane testified that North was so determined to transact the deal that while McFarlane was asleep, North violated McFarlane's orders and instructed Secord to send the plane from Israel with the rest of the HAWK parts. Upon learning of North's actions, McFarlane ordered the plane to return.[1026] After the delegation had left Tehran, North told McFarlane that the Iranian arms deals had produced at least one benefit: the proceeds of the arms sales were being used to support the contras.[1027]

Adnan Khashoggi had furnished $15 million to Ghorbanifar to finance the spare parts transaction, which Ghorbanifar had transferred to the Enterprise's Lake Resources account prior to the shipment. The Israeli government had provided $1.5 million to the Enterprise to finance the 508 TOWs, which were to be shipped to them. The Enterprise had, in turn, provided $6.5 million for payment to the Defense Department for the spare parts, and had incurred expenses of $1.7 million for transportation and related activities.[1028] This left a profit of roughly $10 million, a portion of which was used by the Enterprise to supply the contras with thousands of pounds of lethal military equipment in May 1986. The remainder was transferred to Enterprise bank accounts for the

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[1025]Iran-Contra Report, supra, p. 245.

[1026]Iran-Contra Hearings, Testimony of Robert C. McFarlane, May 12, 1987, p. 79.

[1027]McFarlane Testimony, supra, May 14, 1987, p. 4.

[1028]Secord testimony, supra, May 7, 1987, p. 119.

personal benefit of the Defendants.[1029]

Four days after the last of Khashoggi's payments was deposited in the Lake Resources account, Albon Values, an Enterprise company, paid $26,490 to an Enterprise account named "Korel." Four days later, Hyde Park Square, another Enterprise company, dispensed $200,000 as "capital" for the "Button" account set up by the Enterprise for the North family.[1030]

Overcharging

Shortly after the spare parts were delivered, the Iranians discovered that they had been overcharged by 600% for the HAWK parts.[1031] The Iranians sent a price list to the Israelis detailing the overcharge, but a refund was never considered. Nor did the Enterprise intend to eliminate the overcharge on future shipments. The solution to the Iranian complaint was to have the a false price list prepared to justify the charges.[1032]

[1029]Poindexter, et al., Indictment, supra, pp. 22-23.

[1030]Cockburn, supra, p. 208; Poindexter, et al., Indictment, supra, p. 14.

[1031]Iran-Contra Report, supra, p. 245.

[1032]Iran-Contra Report, supra, pp. 245-246. On July 26, the Iranians obtained the release of Rev. Lawrence Jenco. The Iranians were apparently convinced by Ghorbanifar that the release would lead to the delivery of the remaining HAWK parts. After a meeting between North and Amiram Nir, adviser to Israeli President Shimon Peres, the remaining HAWK spare parts were sent to Iran on August 4. The plane for the shipment was provided by Israel, while the crew was provided by the Enterprise. Id., p. 247.

Arms Sale #6 - October 1986 - 500 TOWs for 1 hostage

After the Tehran mission failed, and added financial complications arose with Ghorbanifar, the Enterprise sought a new opening to Iran. Defendant Hakim testified that he believed the idea to open a "second channel" was Secord's. Hakim took the lead in locating new Iranian contacts, informing Secord and North of his progress.[1033] According to the Iran-Contra Report:

> Hakim thus had an opportunity to promote his business interests and to serve both his newly adopted country, the United States, and his native country, Iran. Hakim estimated the trade market between the United States and Iran to be worth $15 billion. He hoped that his role in renewing relations between the two countries would win him a part of this market. Hakim and Secord intended to use part of the surplus from the Iranian sales to invest for their own benefit in commercial opportunities in Iran.[1034]

The Second Channel

Hakim contacted an Iranian expatriate (the "First Contact"), who travelled to the U.S. to meet with Hakim and consultant George Cave on July 10 and 11, 1986.

[1033] Iran-Contra Report, supra, p. 249, citing Hakim testimony before the Committee.

[1034]. Iran-Contra Report, supra, p. 249, citing Hakim testimony, June 3 and 4, 1987, and a Hakim interview on Nightline, July 9, 1987.

Hakim promised the First Contact a payoff in return for assistance in identifying a new Iranian contact. The First Contact turned to another Iranian businessman, the "Second Contact"; and together they set up a new contact, known as the "Relative" in Iran. The "second channel," consisting of these newly developed contacts, was in place by late July.[1035]

Hakim's and Secord's roles in the Iran initiative expanded significantly with the advent of the second channel. Hakim and Secord attended all meetings with the Relative from August through November, and both conducted important negotiations on behalf of the U.S. involving the release of the hostages.[1036]

On August 25, 1986, a meeting was held in Brussels, Belgium among Secord, Hakim and the new contacts (the First and Second Contacts and the Relative). Secord arranged for a two-day visit for the Relative to Washington on September 19, 1986. The Relative met with North, Secord and Cave, in North's office in the Old Executive Building. Hakim attended part of the meeting. After leaving Washington, the Relative maintained contact with Secord and Hakim.[1037]

The U.S. negotiating team, including North and Defendants Secord and Hakim, met with the Iranian team in Frankfurt, West Germany, from October 6 through October 8, 1986, to negotiate the next arms deal.[1038]

[1035]Iran-Contra Report, supra, p. 249.

[1036]Iran-Contra Report, supra, p. 251.

[1037]Iran-Contra Report, supra, p. 253, citing testimony by Albert Hakim.

[1038]Iran-Contra Report, supra, p. 254.

Secord and Hakim played key negotiating roles in these meetings; at one point, Hakim was the sole negotiator present on behalf of the United States.[1039]

Hakim eventually worked out a deal which called for the release of "1 1/2" hostages (the Iranians would definitely obtain the release of one hostage, and make their best effort to obtain the release of a second). Before the release of any hostages, the U.S. was to provide 500 TOWs to Iran. After the release of the hostages, the U.S. promised to provide 1,000 more TOWs, as well as technical assistance for previously delivered HAWK systems and military intelligence.[1040]

The Iranians agreed to pay the U.S. $3.6 million for the 500 TOWs, and deposited this amount into an Enterprise bank account. Of the $3.6 million, the Enterprise paid approximately $2 million to the U.S. Government for the TOWs, leaving a surplus after costs of approximately $1.3 million.[1041]

In accordance with the terms of the plan negotiated by North and the Iranians in Frankfurt, 500 TOWs arrived in Tehran on October 28, on a flight piloted by an Enterprise crew.[1042] On November 2, David Jacobsen, an American hostage held in Lebanon, was released.[1043]

On the following day, the enire arms initiative was exposed by a Lebanese magazine, Al-Shiraa. Despite the

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[1039]Iran-Contra Report, supra, p. 256.

[1040]Iran-Contra Report, supra, p. 257.

[1041]Secord testimony, supra, p. 123-124.

[1042]Iran-Contra Report, supra, p. 259.

[1043]Iran-Contra Report, supra, p. 261.

revelations, both the Iranian and United States negotiators wished to continue the initiative.[1044]

North contacted Nir on November 23 to inform him that he had been interviewed by Attorney General Edwin Meese, and that Meese had questioned him on the diversion of the profits from Iranian arms sales to the contras. North asked Nir to make arrangments for Israel to assume responsibility for the diversion. According to North's notes, Nir rejected the request.[1045]

On November 25, 1986, Attorney General Meese held a televised press conference to announce that an investigation conducted by his office had revealed the diversion of funds from the Iran initiative to aid the contras.[1046] The disclosure put an end to the Iranian venture.

Congressional investigations and hearings, and grand jury investigations and indictments followed. However, the Enterprise continues to engage in criminal racketeering activity.

ON-GOING VENTURES OF THE ENTERPRISE

"The Fish Farm" and Off-the Shelf Assassinations

It is believed that Defendant Theodore Shackley is a "secret shareholder" of ANV, a Jupiter, Florida-based corporation known as the "The Fish Farm" which trains foreign nationals in the United States for "sabotage and subversion" missions on Andros Island in the Bahamas.[1047]

[1044]Iran-Contra Report, supra, p. 261.

[1045]Iran-Contra Report, supra, p. 262.

[1046]Iran-Contra Report, supra, p. 317.

[1047]Wheaton Deposition, supra, p. 369.

The Fish Farm is an organization set up by a group of former intelligence officers of the military and the CIA as a private corporation with a board of directors, that does legitimate business in Florida, but also has a covert program train assassins for hire to various groups and governments around the world.[1048] Gene Wheaton, a retired U.S. Army criminal investigator for the Criminal Investigation Division (CID) with a long history as a law enforcement officer, was approached by a headhunter for ANV who stated that its function was intelligence security, high-tech security, port security, shipping security, active measures in counter-terrorism. ANV is a wholly owned subsidiary of CSA on whose board Defendant Shackley sits. The founder of CSA is Robert C. "Stretch" Stevens, Jr.[1049]

Shackley, as a "secret shareholder" of ANV, exerts almost total or very heavy influence over the activities of Robert "Stretch" Stevens, CEO of ANV. Stevens, a maritime paramilitary operative had worked for Shackley for 25 years, in various ventures of the Enterprise, including the anti-Castro operations in Cuba and in Southeast Asia.[1050]

William Hamilton, who, as discussed above, had recruited Sam Hall for the Phoenix Battalion, a covert plan to mount world-wide preemptive strikes, is the senior Vice President of ANV. On the advisory board are Gen. Kingston, Adm. Scarborough, Adm. Kidd, Francis J. "Bing"

[1048]Wheaton Deposition, supra, pp. 222 and 227-8.

[1049]Wheaton Deposition, supra, pp. 222-8.

[1050]Wheaton Deposition, supra, p. 360, 359.

West.[1051]

William Hamilton confirmed that the training of non-government commandos and assassins in obscure training camps is being set up around the United States and that these commando battalions were to train Haitians, Southeast Asians, Koreans, and Americans in paramilitary operations.[1052] It is likely that ANV had originally been a U.S. government proprietary that had then gone private.[1053]

ANV is in all likelihood conducting operational training on Andros Island, in the Bahamas.[1054] Furthermore, it has been reported by a television network that as of July 1987, foreign nationals were being trained for "sabotage and subversion" missions on a Caribbean island by "a Jupiter Florida-based company."[1055] An ABC helicopter had been shot down over Andros Island two or three years ago, killing a reporter; and the incident was kept secret for national security reasons.[1056]

It is apparent that ANV functions as an umbrella organization for various commando groups, including the

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[1051]Wheaton Deposition, supra, pp. 229-230.

[1052]Wheaton Deposition, supra, pp. 310, 315, 356-357

[1053]Wheaton Deposition, supra, pp. 356-357. Champlain, ANV headhunter, who had previously worked for Consultants International under Ed Wilson, provided this information to Wheaton.

[1054]Wheaton Deposition, supra, p. 369

[1055]Karen Burnes, "ABC World News Tonight," 16 July 1987.

[1056]Wheaton Deposition, supra, p.372.

Phantom Battalion near Memphis and Peregrine in Texas.[1057] ANV and one or more of the commando groups involve many of the same individuals, and there are numerous ties between them and the Secord-Shackley-Clines-Hakim Enterprise.[1058]

Jim Turney of Posey's CMA, was involved in the Phantom Battalion, which had a nucleus of people from Defendant Posey's organization.[1059] Vang Pao, former Shackley and Clines' associate in the opium drug trade and assassination program in Laos, and former military and intelligence officers associated with him were planning to establish one such group in Arkansas, to train Laotian tribesmen. A meeting to further this project was held in March 1987 at the Heritage Foundation in Washington, DC.[1060] Others involved in the Arkansas project include Rick Wade from Valdez, Alaska; Bill Bode, who was closely aligned with Defendant Owen and Vaughn Forrest, administrative assistant to Congressman William McCollum;[1061] Carl Jenkins, who had originally recruited

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[1057]Wheaton Deposition, supra, p. 373.

[1058]Wheaton Deposition, supra, pp. 381, 395.

[1059]Wheaton Deposition, supra, pp. 380, 379.

[1060]Wheaton Deposition, supra, pp. 373, 374, 376.

[1061]Bode worked in close collaboration with Owen and Forrest in the resupply efforts to the contras during the period the Boland Amendment was in effect and also in a covert supply operation to aid the Afghan rebels. Forrest has maintained that there can be a justification in certain circumstances for going outside the law and creating a death squad. Wheaton Deposition, pp.90-110, 198.

and trained such Enterprise members as Defendants Clines and Quintero,[1062] and Carl Bernard, retired U.S. Army Colonel, special operations. Some managers of the Daisy Air Rifle Company provided property in western Arkansas for the training camp.[1063]

Gary S. Howard and Ronald R. Tucker founded Peregrine International Associates in 1981 and claim they worked on covert operations with Defense Department approval from then until 1984, when the company folded. Many of Peregrine's personnel were veterans of the Army Delta Force unit; the company hired both retired and active-duty military personnel on leave to act as "guns: guys who had no qualms about blowing people away, which is real fine for protective-type work." Peregrine would receive funds for these operations from U.S. agencies such as Customs or from foreign governments, which may have been drawing on U.S. military assistance funds. Their operations include killing drug smugglers in Peru, Honduras, Belize, and Caribbean nations; arming and training contras; and arming and training official military commando units in El Salvador, Honduras, and Peru. Richard J. Meadows served for a time as Peregrine's president; Charles Odorizzi and William Patton worked for the group. Peregrine's key contacts were retired Army Lt. Gen. Samuel V. Wilson (former director of the DIA) and Lt. Col. Wayne E. Long, who as of April 1987 worked as a senior officer in the Foreign Operations Group, which is

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[1062]Jenkins remains close with Clines and Quintero, speaking with them weekly. Wheaton Deposition, pp. 122-123.

[1063]Wheaton Deposition, supra, p. 377

part of the Army's Intelligence Support Activity office.[1064]

Singlaub in the Philippines

In 1986, Defendant Singlaub moved his base of operations to the Philippines, where Ferdinand Marcos has just been deposed. In November, Singlaub and retired Lt. Gen. Robert L. Schweitzer, a one-time employee of the NSC and currently an adviser to GeoMiliTech, traveled to the Philippines to meet with General Luis Villa-Real, head of the Philippine National Intelligence Coordinating Authority, and Chief of Staff Fidel Ramos. Villa-Real is president of the Philippine chapter of the World Anti-Communist League and was instrumental in the creation of right-wing, para-military groups there.[1065] Singlaub also met with CIA station chief Earl Norbert Garrett, Ray Cline and then-Defense Minister Juan Ponce Enrile, an opponent of President Corazon Aquino.[1066]

Shortly after that meeting, the Philippine vigilante groups, armed with sophisticated M-283 rifles with grenade launchers attached, intensified their operations. In March of 1987, in a move reminiscent of his early campaign against Nicaragua, President Reagan signed a finding directing the CIA to conduct increased counterinsurgency operations against the New Peoples Army in the Philippines. The finding specified ten activities, including

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[1064]Frank Greve, Matthew Purdy, and Mark Fazlollah, "Firm Says U.S. Urged Covert Plots," Philadelphia Inquirer, 26 April 1987, p. 1-A.

[1065]"Singlaub and Cline, Americans Involved in the Coup?" Philippine Daily Inquirer, November 17, 1986.

[1066]"What's General Singlaub Doing in Pasong Tamo?" Philippine Daily Inquirer, December 19, 1987.

media operations and disinformation campaigns, intelligence gathering, increased military advisers and CIA staff, and overflights.[1067]. Former intelligence personnel have noted the striking similarities to the CIA's Phoenix Program in Vietnam.[1068]

Thus, the Enterprise continues to be involved in criminal racketeering activity. The full range of these violations of law can only be uncovered and enjoined if the Plaintiffs are granted the relief sought in the accompanying filings: leave to file an amended complaint, lifting of the temporary restrictions on discovery and a continuation of the trial date.

DATED: March 25, 1988

Of Counsel:
Norma Kerlin
Daniel P. Sheehan
Lewis Pitts
Lanny Sinkin
Edith A. Holleman
Andrew S. Love
Donna J. Henderson

[1067]San Francisco Examiner, March 22, 1987.

[1068]Oltman and Bernstein, "The El Salvador of the Pacific: Counterinsurgency in the Philippines," Covert Action Intelligence Bulletin, Winter 1988.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Filed Decmber 12, 1986

Tony AVIRGAN, et al.,
Plaintiffs,

v.

John HULL, et al.,
Defendants.

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AFFIDAVIT OF DANIEL P. SHEEHAN

Below, the Plaintiffs' attorney, Daniel P. Sheehan, sets forth for the Court in the following Affidavit, the explanation of the evidence presently in his possession -- which evidence does, in fact, rise to the level of "probable cause" to believe that the Defendants named in this federal civil lawsuit are guilty of the commission of the federal criminal violations set forth in the Amended Complaint of October 4, 1986. The Plaintiffs move that this Affidavit
of Counsel be deemed a Supplemental Filing to their October 4, 1986, Amended Complaint if the Court deems this to be legally required and that it be deemed
by the Court to set forth the evidentiary basis upon which a reasonable person -- drawing all logical inferences from the facts adduced in the direction of the Plaintiffs -- would

conclude that it is more probable than not that each of the Defendants named in this civil suit is guilty of violating the Federal RICO Statute and that each is civilly liable to the Plaintiffs Tony Avirgan and Martha Honey for having fortuitously contributed to the civil wrongs committed against them as charged in this Amended Complaint -- as Supplemented by the Affidavit of Counsel.

ATTORNEY DANIEL P. SHEEHAN

Now comes Attorney Daniel P. Sheehan, and having been duly sworn hereby swears and affirms that the following facts are true:

I am a duly licensed attorney at law, admitted to practice before the State and Federal Courts of the State of New York in both the Northern and Southern Districts of New York.

I am duly licensed and have been admitted to practice before the Courts of the District of Columbia, both local and Federal and I am in good standing before both the Bar of New York and the Bar of the District of Columbia.

I have practiced law before the courts of New York and numerous other states in our nation since 1970, having served as counsel in some 60 separate pieces of litigation in the states of New York, Pennsylvania, North Carolina, Virginia, the District of Columbia, Georgia, Florida, Oklahoma, Ohio, Colorado, Idaho, Nebraska, South Dakota, Wyoming and Mississippi;

I graduated from Harvard College in 1967 as an Honors Graduate in American Government, writing my

Honors Thesis in the field of Constitutional Law, and was the Harvard University nominee for the Rhodes Scholarship from New York in 1967. I graduated from Harvard School of Law in 1970, having served as an Editor of the Harvard Civil Rights-Civil Liberties Law Review and as the Research Associate of Professor Jerome Cohen, the Chair of the
International Law Department of Harvard.

While at Harvard School of Law, I served as a summer associate at the State Street law firm of Goodwin, Proctor and Hoar under the supervision of Senior Partner, Donald J. Hurley, the President of the Boston Chamber of Commerce and Massachusetts Senatorial Campaign Chairman for John F. Kennedy. At this firm I participated in the case of BAIRD v EISENSTAT, under Roger Stockey, General Counsel for the Massachusetts Planned Parenthood League
(establishing the unconstitutionality of the Massachusetts anti-birth control law) and in the Nevada case, under Charles Goodhue, III (establishing the constitutional right to bail in criminal extradition cases, including capital cases).

While at Harvard School of Law, I authored "The Pedestrian Sources of Civil Liberties" in the Harvard Civil Rights-Civil Liberties Law Review and I served under Professor Milton Katz, the President of the International Law Association, as the Chairman of the Nigerian Biafran Relief Commission responsible for successfully negotiating the admission of mercy flights of food into Biafra in 1968.

While serving as a Legal Associate at the Wall Street law firm of Cahill, Gordon, Sonnett, Reindel and Ohlo under partner Floyd Abrams and in association with Yale Law School Professor of Constitutional Law Alexander

Bickel, I participated in the litigation of such cases as the UNITED STATES v THE NEW YORK TIMES (establishing the constitutional right of The New York Times to publish the Pentagon Papers); UNITED STATES v BRANZBERG (litigating the First Amendment right of professional journalists to protect the identity of confidential news sources) and THE NEW YORK TIMES v THE JEWISH DEFENSE LEAGUE (establishing the right of newspapers to refuse to publish proffered paid political advertisements of their choosing).

While a Legal Associate of the Cahill, Gordon law firm, I was appointed by New York City Mayor John Lindsey to be Legal Counsel to the Inmate Association of the Manhattan House of Correction and was admitted to practice, pro hoc vice before the United States District Court for the Western District of New York with Professor Herman Schwartz in the case of IN RE ATTICA PRISON INMATES v MANCUSO (which caused the reversal of the official New York State Coroner's Autopsy falsely certifying that all 41 hostages held by the inmates at Attica prison had been killed by having their throats cut by the inmates -- whereas, in fact, all 41 hostages had been killed by the gunfire from New York State Police into Attica Prison's exercise yard from the parapets surrounding the prison.) During this period, I also served as public interest counsel in the case of CORTIGHT v. RESOR, (establishing the First Amendment Right to Freedom of Expression of US Servicemen); in the case of IN RE LINDA JENESSE (establishing the right of appearance on the ballots of New York of all candidates who obtained the legally required numbers of signatures on their petitions.) and in McGOVERN FOR PRESIDENT, INC. v MAYOR JOHN LINDSEY (establishing the First Amendment right of candidates for public office to the use of public park

facilities).

In 1972, I served as the New York States Assistant Campaign Director in Charge of Voter Registration for George McGovern for President and the New York State Democratic Party; and as Special Counsel to the Scott Commission associated with the Knapp Commission investigation of New York City police corruption.

I then practiced as Litigation Associate to F. Lee Bailey in the Boston Law firm of Bailey and Alch during the period when Gerald Alch was representing James McCord, the electronic eavesdropping specialist in the Watergate Burglary Case -- the man who wrote the letter to Judge John Sirica
revealing the direct involvement of then President Richard M. Nixon and high-ranking White House personnel in the unconstitutional Huston Plan and the unlawful cover-up activities in the Watergate Burglary Case.

I also served as Chief of Litigation for the national American Civil Liberties Union office in the Rocky Mountain States where I served as Chief Trial Counsel in some one dozen trials -- including the First Amendment criminal defense of the United Artist film "LAST TANGO IN PARIS"; the successful Federal Civil Rights Act civil prosecution of the members of the Idaho State Board of Education in LYMAN v SWARTLEY, et al. for the unlawful termination of American Federation of Teachers union organizer Rufus Lyman from the Idaho State University; UNITED STATES v STARR (dismissing Rap Brown Act charges against students arrested in Nebraska for endeavouring to attend funeral ceremonies in South Dakota for a member of the American Indian Movement killed at Wounded Knee.) In this and many other cases, I served as

Co-counsel to the National Native American Rights Committee for the National Office of the American Civil Liberties Union and as one of the Counsel in the United States Supreme Court case of MANCARI v MORTON (establishing the constitutionality of the preferential hiring of Native Americans by the National Bureau of Indian Affairs).

After attending Harvard Divinity School, I served as General Counsel to the United States Jesuit Headquarters' Office of Social Ministry in Washington, D.C., in which capacity I served as National Chairman of the Washington Inter-religious Staff Council's Task Force on Civil Rights and also as the National Chairman of the Washington Inter-religious Staff Council's Task Force on Criminal Justice. In this latter capacity, I served as the primary Washington, D.C., lobbyist for the national religious community in opposing the passage of Senate Bill One, the draconian Nixon-Mitchell Federal Criminal Code.

In this capacity I also chaired the Civil Liberties and Religious Community Briefing for United States Attorney General Griffin Bell in 1977.

Between 1976 and 1986, I served as Chief Counsel in the major environmental and civil rights case of KAREN G. SILKWOOD v THE KERR McGEE NUCLEAR CORPORATION.

Since 1980, I have served as General Counsel and Chief of Litigation for the Christic Institute, a 501 (c)(3) public interest law firm and interfaith public policy center in Washington, D.C., serving as Chief Counsel in such cases as THE PEOPLE OF THREE MILE ISLAND v THE GENERAL PUBLIC UTILITIES CORPORATION, (successfully enjoining the General Public Utility

Corporation from venting radioactive materials from the damaged Three Mile Island nuclear plant into the surrounding environment and compelling the corporation to undertake court-approved clean-up methods); the successful first degree murder defense of Mayor Eddie Carthan, the first elected black mayor in the Mississippi Delta since the Civil War; and the winning of the dismissal of all criminal charges against the staff of Catholic Bishop John Fitzpatrick of Brownsville, Texas, who had engaged in aiding Salvadoran refugees in their effort to obtain political asylum in the United States in the case of UNITED STATES v STACEY MERKT.

The Investigation Begins

During the course of investigating the case of UNITED STATES v STACEY MERKT, I was contacted, in March of 1984, in Brownsville, Texas, by a Protestant minister, Source #1, and was informed by this Protestant minister, that he had been contacted by an FBI field agent in the Brownsville area, Source #2, and had been informed by this FBI agent that this agent had been instructed by a superior in the United States Department of Justice, Source #3, that undocumented Central American refugees being transported into the United States by members of the Catholic Church participating in the Sanctuary Movement included "known communist terrorists" who constituted "a potential threat to the national security of the United States", in that such persons were potential participants in "military cadres" to be launched against United States military installations, domestic communications centers and domestic water resource systems -- "in the event that President Reagan had to initiate a direct military action by US forces into Central America, either into El Salvador or into Nicaragua." This Protestant minister, who was reported to

me by the professional religious personnel of Catholic Bishop John Fitzpatrick to be an honest and trustworthy source of information based upon their direct experience with him, informed me that he had been warned by this FBI field agent -- whom the Protestant minister, in turn, knew to be an honest and trustworthy source of information -- to avoid any contact with such undocumented Central American refugees being aided by the Catholic Church participants in the Sanctuary Movement, if the minister wanted to avoid being caught up in trouble, in the event that President Reagan was forced to undertake military action in Central America.

Being troubled by this report from an honest and trustworthy source, after I completed the Preliminary Hearing for Stacey Merkt before the Federal Magistrate in Brownsville, Texas, I returned to my office in Washington, D.C., and began a Preliminary Investigation to ascertain the source of this unfounded accusation against my church and against the members of the community of undocumented Central American aliens as I had come to know them.

In undertaking this Preliminary Investigation, I reached out to several experienced and trustworthy professional investigators and professional investigative journalists whom I was certain had trustworthy sources who could locate the origin of this accusation. Among these investigators were:

SOURCE #4, a licensed, professional private investigator who is the President of his State Association of Private Investigators, a member of his Governor's Private Security Advisory Group in his state, a former federal agent with a decade of experience working with members of the military intelligence community, the FBI, the Central Intelligence Agency, the US Customs

Department, the DEA and various State Bureaus of Criminal Investigation;

SOURCE #5, a former professional research specialist for a major national newspaper, a former Staff Researcher for a Sub-Committee of the United States House of Representatives directly involved in the congressional investigations relating to Intelligence Community and FBI abuses of citizens' rights and a man with many years of employment by professional law firms in Washington, D.C., as a researcher;

SOURCE #6, a professional investigative journalist previously employed as a staff investigator for syndicated columnist Jack Anderson, a staff member of the Washington, D.C.-based investigative journalist organization The Center For Investigative Journalism and a staff investigative journalist for CBS Evening News; and SOURCE #7, a former reporter with one of our nation's largest newspapers, a reporter for a national wire service and a staff investigative reporter for one of the national television networks.

At the end of March of 1984, I communicated to Sources #4, #5, #6, and #7 the information communicated to me earlier in March by Protestant Minister Source #1 and I asked them to ascertain for me the source of this accusation that the Catholic Church participants in the Sanctuary Movement were somehow involved in smuggling into the United States "known communist terrorists" who planned to form themselves, once inside the United States, into "military cadres" to undertake the launching of military assaults against U.S. military installations, domestic communication centers and domestic water resource systems -- in the event that President Reagan deemed it necessary to initiate direct military action by U.S. forces in Central America, either in El Salvador or in Nicaragua.

During the second week of April of 1984, I was informed by Source #4 that President Ronald Reagan had, on April 6, 1984, issued National Security Decision Directive #52 authorizing then Federal Emergency Management Agency Director Louis O. Giuffrida and his Deputy Frank Salcedo to undertake a secret, nation-wide, "readiness exercise" code-named "REX 84". This exercise was to test the "readiness" of the Federal Emergency Management Agency to exercise civilian supervisory authority over defense department personnel, the personnel of all 50 State National Guard units and numerous, state-based "State Defense Force" units (which were to be established, at the behest of FEMA, by state legislative enactments) -- in the event that President Reagan chose to declare a "State of Domestic National Emergency" concurrent with the launching of a direct United States military operation into Central America. This military operation was to be code-named "Operation Night-Train."

According to Source #4, the "mission" of the FEMA operation to be tested pursuant to this REX 84 readiness exercise was two-fold. First, the Federal Emergency Management Agency (after "deputizing" all DOD personnel and State National Grand personnel -- ostensibly so as to make such personnel "civilians," and to, thereby, avoid violating the Congressionally enacted Posse Comitatus Act) would undertake to test it's ability to seek out, and to take into custody, some 400,000 undocumented Central American aliens throughout the United States and, then, to intern said Central American aliens in ten military detention centers, to be established during this REX 84 readiness exercise at ten U.S. military bases throughout the United States. These undocumented Central American aliens were to be held at these detention centers during

any real such Presidentially deemed State of Domestic National Emergency, without the right of Habeas Corpus, until President Reagan declared the State of National Emergency to be at an end.

The second "mission" of the FEMA operation to be tested pursuant to this REX 84 readiness exercise was the distribution -- by FEMA, from U.S. military bases under the supervision of the United States Department of Defense, through the State National Guard Units, down into the hands of the civilian, state-legislature-created State Defense Forces -- of hundreds of tons of small arms and ammunition, ostensibly to be used by their civilian domestic law enforcement "deputies" to enforce domestic laws, during the pending of the Presidentially declared State of National Emergency.

The interest of the Christic Institute focused primarily on the first of the two "missions" assigned to FEMA by this April 6, 1984 Presidential National Security Decision Directive. This first mission was of direct immediate, interest to our law office in attempting to evaluate the "state of mind" and attitude of the Justice Department personnel who were to be "fielded" against us in the prosecution of the Sanctuary Movement personnel we were retained by the Catholic Church to defend in Texas.

Upon learning of the existence of this REX 84 readiness exercise, I reached out, through Sources #4, #5, #6, and #7 to find an "inside source" at FEMA to either confirm or deny the intelligence information conveyed to me by Source #4 regarding the planned readiness exercises named REX 84.

During the third week of April of 1984, Source #7 obtained for me an introduction to Source #8 -- a member

of the Legal Division of the Federal Emergency Management Agency, the office headed up by FEMA General Counsel George Delt.

Source #8, who was known by Source #7 to be an honest and trustworthy source of information based upon Source #7's direct experience with him, was shocked that I had such accurate information concerning the content of Presidential National Security Decision Directive #52, but he expressly confirmed the accuracy of the intelligence report given to me by Source #4 concerning the two-fold mission of REX 84.

Source #8 expressed directly to me a high degree of fear and anxiety about the legality of what was being planned by FEMA General Counsel George Jett, FEMA Director Louis O. Giuffrida and FEMA Deputy Director Frank Salcedo.

Source #8 reported to me that he had never before seen inside FEMA such an intense level of security concerning any program. Source #8 reported to me that FEMA General Counsel George Jett had ordered the installation of a special metal security door into the hallway on the fifth floor of the FEMA building in Washington, D.C. -- behind which door all of the planning for REX 84 was being conducted. Indeed, Source #8 reported to me that even long-standing employees of the civil defense division of the Federal Executive Department possessing the highest possible security clearances were not being allowed through the newly-installed metal security door on the fifth floor of the FEMA building to have access to the planning of REX 84. Source #8 reported that only FEMA Director Louis O. Giuffrida, his Deputy Director Frank Salcedo, FEMA General Counsel George Jett -- and a few other men

whom Source #8 noticed all wore a small red Christian cross, or crucifix pin, on the lapel of their suits -- were even allowed through the metal security doors on the fifth floor of the FEMA building to have access to REX 84 information.

Through a Source #9, I was able to obtain a series of Federal documents from inside FEMA which tend to confirm the above-reported description of the FEMA activities reported to me during April of 1984.

In early May of 1984, I was supplied by Source #4 with a number of documents describing, in some detail, a project supervised by then Special Assistant California State Attorney General Edwin Meese code-named "Project Cable Splicer". This project, undertaken by Edwin Meese, under the direction of then California Governor Ronald Reagan, took, then California Organized Crime Training Institute Commandant, Louise O. Giuffrida from his post in San Luis Obispo and made him the Commanding General of the California State National Guard. At the California Organized Crime Training Institute, Commandant Louis Giuffrida had been the Instructor in Civil Disorder Control. As Commanding General of the California State National Guard, Louis Giuffrida coordinated Project Cable Splicer for Special Assistant Attorney General Edwin Meese and Governor Ronald Reagan.

Project Cable-Splicer was a special "war-games" readiness exercise pursuant to which Governor Reagan, Special Assistant Attorney General Edwin Meese and California State National Guard Commander Giuffrida could, together, establish an effective state of state-wide martial law "in the event that forces of radical black nationalism joined forces, inside the State of California, with the anti-Vietnam forces to challenge the established

authority of the State." Project Cable Splicer was part of a larger program, code-named "Project Garden Plot" -- which was a nation-wide war-games scenario prepared by then President Richard M. Nixon and his Attorney General John Mitchell designed to establish a nation-wide state of martial law if Richard Nixon's "political enemies" required him to declare a State of National Emergency.

"State Defense Forces" and a "Guns for Contras" Scam

In mid-May of 1984, I was informed by Source #10, who was a professional journalist in New Orleans, Louisiana, that he had learned that the State Legislatures of Louisiana, Alabama and Texas had sometime around April 1984 or May 1984 each passed legislation establishing units known as "State Defense Forces". Source #10 informed me that he was extremely concerned about this because the only people in Louisiana, Alabama or Texas who seemed to have heard of the passage of these statutes -- and who were, therefore, signing up to join these State Defense Forces -- were ultra right-wing para-military "survivalist-types", or "soldiers-of-fortune-types", who were being advised to
sign up for these State Defense Force units at weekend Survivalist Training Centers or ultra-right "war-game" schools.

Source #10 informed me that this concern on his part had caused him to undertake an investigation to ascertain what was going on regarding the State Defense Force units in Alabama, Louisiana and Texas. Source #10 informed me
that he had discovered that a group of men in Texas who had all signed up for the Texas units had been expelled by the Texas National Guard for being too radically right wing. This investigation led him to a Louisiana State National Guard Colonel, Source #11. Source #10

informed me that this Louisiana State National Guard Colonel had informed Source #10 that the State Defense Force unit in Louisiana was -- in the near future -- (this being in May of 1984) going to be receiving a large quantity of small arms and ammunition "in some kind of war game activity" supervised by the Federal government -- but that the State Defense Force in Louisiana "was only going to have to give back half of the arms and ammunition received in the war-games. The half which were left with them were going to be smuggled out of the country to the Contras in Central America." This was to be achieved, according to the Colonel, by re-valuing the weapons, while in the field, from "manufacturer's" value to "replacement value", and then collecting the same dollar value, as was originally distributed at the outset of the war-game.

Source #10 informed me that this Colonel had been proven, repeatedly, to be a reliable source of accurate information, and that the arms and ammunition which were to be left in the hands of the Louisiana State Defense Force Units were to be secretly transported to a Louisiana warehouse owned or supervised by a Louisiana state legislator (who had been active in obtaining the passage of the State Defense Force statute). This legislator's name was "Woody" Jenkins. The Colonel reported that from that point, the arms and ammunition would be airlifted (mixed in with "humanitarian" aid for the Contras in Central America) to Central America and given to the Contras -- "because the liberals in Congress had cut off the Freedom Fighters when the CIA got caught mining the harbors in Nicaragua".

My own investigations revealed the existence of one "Woody" Jenkins in Louisiana, a man who was a Louisiana

State Legislator of ultra right-wing political persuasion, who was running an allegedly "humanitarian aid" airlift to the Contras known as "Friends of the Americas."

I informed Sources #4, #5, #6, and #7 of the information communicated to me by Source #10 and asked them to undertake inquiries to ascertain if any similar activity was under way in either Texas or Alabama.

I was immediately informed by Source #7 that he was aware of a similar type of operation functioning in the state of Alabama. Source #7 told me the following information:

American Mercenaries and the Contras

That immediately prior to the Christmas holiday of 1983, Source #7 had been contacted by a fellow professional journalist, Source #12, who had just returned home from a trip to Miami, Florida, where she had learned of the location of a Contra military training camp in the vicinity of Miami. She had learned that, in this camp, men were being trained on United States soil to undertake direct military attacks upon the citizenry and economic infrastructure of Nicaragua. Source #12 informed Source #7 of the location of this Contra training base near Miami and suggested that Source #7 undertake a trip to this Miami area Contra training camp to interview the men training persons there and the men being trained.

Source #7 traveled to the location described to him by Source #12 in the vicinity of Miami, Florida over the Christmas holiday of 1983 and found the Contra military training camp there, exactly as described to him by Source #12.

Source #7, being fluent in both English and Spanish, interviewed men doing the military training of Contras at this Miami vicinity base and the men receiving the Contra training over the 1983 Christmas holiday period.

A Honduran Meeting

During these interviews, Source #7 learned that there was a contingent of former U.S. military personnel and active members of various U.S. State National Guard units who were planning to organize an unlawful, American-based, para-military organization to train, equip, and finance -- from U.S. soil -- and actively to participate in military field operations with the Contra forces in Central America against the U.S.-recognized Government of Nicaragua. During these interviews, held at the Miami area Contra military training base by Source #7 during the 1983 Christmas holidays, Source #7 learned that the U.S. citizens who were organizing this unlawful American-based para-military organization to be established to aid the Contras from U.S. soil, were planning to hold a meeting at a particular hotel located in Tegucigalpa, Honduras in January of 1984 to finalize specific plans for obtaining U.S. military equipment for and providing other federally prohibited aid to the Contra Forces.

Having failed to obtain permission from his United States based newspaper to attend and to report on, this planned January 1984 meeting of U.S. citizens at the Tegucigalpa hotel, Source #7 took a temporary leave of absence from his newspaper and financed his own trip to Tegucigalpa in January of 1984.

In January of 1984, Source #7 travelled to

Tegucigalpa, Honduras, and registered at the hotel described to him in interviews held at the Miami Contra training base during the Christmas holidays of 1983. While sitting in this hotel lobby, Source #7 observed numerous white adult male U.S. citizens speaking Engiish and dressed in various forms of camouflage and war surplus U.S. military garb.

During his prolonged period of observation in this hotel lobby in Tegucigalpa, Honduras, during January of 1984, Source #7 struck up a conversation with a white adult male United States citizen who was a participant in the para-military group meeting transpiring at the hotel.

Source #7 informed this person that Source #7 was an American writer interested in understanding and publicly reporting on what was transpiring at this Honduran hotel.

The white adult U.S. male with whom Source #7 had struck up this relationship was Thomas Posey - the Defendant in the present Federal civil lawsuit.

During these January, 1984 conversations at the Tegucigalpa Hotel with Source #7, Defendant Thomas Posey described, in some detail, the entirely illegal plan of action being developed by the U.S. participants in the January 1984 meetings in Honduras. Defendant Posey described how he and his associates were organizing an American-based group -- which was named the Civilian Military Assistance organization -- the mission of which was to recruit, train, finance, supply and to launch, from United States soil, a foreign military expeditionary force, consisting of U.S. citizens who were former members of the United States armed forces and present members of various state National Guard units and anti-communist

Cubans, Nicaraguans and other Central Americans who wished to undertake direct military action to overthrow the socialist government in Nicaragua.

During these January, 1984 conversations with Source #7, Defendant Posey expressed his opposition to the public policy and laws of the United States Congress regarding Nicaragua, stating that Defendant Posey and his Civilian Military Assistance organization were going to organize and prosecute the war against the government of Nicaragua which the United States Congress did not have the political conviction to allow the official United States military to prosecute.

Between January of 1984 and mid-May of 1984, Defendant Posey had several conversations with Source #7 during which conversations Defendant Posey openly admitted his unlawful activities supplying military equipment and explosives to Contra military and terrorist units in both Honduras and Costa Rica -- with the express understanding and intention that this military equipment would be used against the unarmed civilian population inside Nicaragua to terrorize the people and to destabilize the government of Nicaragua. Indeed Defendant Posey openly solicited Source #7 to prepare and to publish, within the United States, reports of Defendant Posey's convictions and activities -- so as to assist Defendant Posey in his recruitment of U.S.- based contra supporters and in his raising of money.

Source #7 personally attended Executive Committee sessions of the leadership of the Civilian Military Assistance organization and personally observed and heard planning sessions in which overtly criminal operations were planned and agreed to by Defendant Posey, between January and May of 1984. These activities Source #7

reported to me in May of 1984, requesting my analysis of the unlawful nature of the activities of Defendant Posey and his associates in the Civilian Military Assistance organization. I provided this legal analysis, pointing out that their activities constituted a direct criminal violation of numerous federal criminal statutes, including the Federal Neutrality Act, the Federal Arms Export Control Act, various Federal Firearms and Explosives Statues and other Federal and State laws.

An American Mercenary's Diary

Through Source #7, I was introduced to Source #13, a direct participant in the high-level planning and execution of the criminal conspiracy of Defendant Posey and his associates in the Civilian Military Assistance organization.

Source #13, prior to the filing of the Civil Complaint in this case, described for me, in detail, the Federal Criminal activities of Defendant Thomas Posey regarding the obtaining of allegedly "surplus" U.S. military equipment from the 20th Special Forces Unit of the United States Army in Alabama and the obtaining of access to an allegedly "surplus" U.S. Armed Forces airplane in New Jersey in which to transport this material from U.S. territory, via Ilopango Air Base in El Salvador to Costa Rica, Honduras, and Nicaragua. Source #13 described personally seeing crates of U.S. military equipment (clearly marked as such) stacked in the private garage of Defendant Thomas Posey awaiting transfer to the state of Florida, where the military material was to be secretly flown to Ilopango Air Force Base for transhipment to contra forces in Costa Rica and Nicaragua.

Indeed, Source #13 personally informed me of the

existence of his hand-written daily diary -- into which he had made regular contemporaneous daily entries from a period in 1983 all the way to 1986. He described certain events memorialized in this diary -- and I have personally reviewed a xerox copy of this diary. Details taken from Source #13's statements to me and from his diary are set forth below in this Affidavit.

During my conversations with Source #13, he informed me that he was aware of the identity of several men who had personally participated in the transporting, loading, and flight of forbidden military equipment from the State of Florida, to Ilopango Air Force Base in El Salvador, and from there, onto the Costa Rican ranch of an American by the name of John Hull. This is the same John Hull who is named as a Defendant in the present Federal Civil lawsuit.

The men named by Source #13 are Source #14, one Jesus Garcia; Source #15, one Steven Carr; Source #16, one Peter Glibbery; Source #17, one Jose Cotine; Source #18, one Alan Saum; and Source #19, another individual with direct personal knowledge of these illegal weapons and explosives transactions.

Either I, or one of my investigators or associates, have personally interviewed each of Sources #13, #14, #15, #16, #17, #18, and #19 -- or they have been directly interviewed by Source #20, Attorney John Mattes, the Assistant Federal Public Defender in the United States District for Southern Florida or his professional investigator, Source #21. The content of these interviews have been communicated to me. These interviews set forth the first direct, first-hand, knowledge of Sources #13, #14, #15, #16, #17, #18, and #19 of the participation of Defendants Thomas Posey, John Hull and Bruce Jones in the Federal Criminal Conspiracy to violate the Federal

Neutrality Act and the Federal Arms Export Control Act described in the Plaintiffs' Amended Complaint. These facts, and the specific sources of the these facts will be set forth below.

In June of 1984, I left Washington, D.C., to travel to the United States District for Southern Texas, Brownsville Division, where I served as Chief Trial Counsel in the case of United States v. Stacey Lynn Merkt, et al.

A White House Connection: North, Posey and Owen

Upon returning to Washington, D.C., in late June of 1984, I was contacted by Source #7 and was asked to meet with him. In this meeting, Source #7 informed me that, during the month of June of 1984, Source #7 had been contacted by Defendant Thomas Posey, who had arrived in Washington, D.C. Source #7 stated that he had met with Thomas Posey, in Washington, D.C., in June of 1984, and that Defendant Thomas Posey had physically introduced Source #7 to one Robert Owen -- the same Robert Owen who is named as a Defendant in the present Federal Civil Lawsuit.

Source #7 stated to me, in June of 1984, that Source #7 had met with Defendant Robert Owen and Defendant Thomas Posey in a public park in Washington, D.C., in June of 1984 and that Defendant Robert Owen, at that time, stated to Source #7 that Robert Owen was a purely private citizen who was acting solely in his purely private capacity to meet with the military and political leadership of the Contras to communicate to them political advice as well as to advise them in regard to what military equipment they might need to carry out their military operation against the Nicaraguan Government. During this June, 1984 public park meeting with Source #7,

Defendant Robert Owen also stated that Defendant Owen was "taking orders" for weapons, military equipment and explosives from the Contra military commanders in Central America and seeing to it that their orders were filled and that the material was, in fact, supplied to the Contras in Central America.

Then, during this same public park meeting with Source #7 in June of 1984, Defendant Robert Owen expressly stated to Source #7 that Defendant Robert Owen was "the personal representative to the Contras of Marine Corps.
Lt. Colonel Oliver North, the Deputy Director of the United States National Security Council for Political-Military Liaison" and that Defendant Owen was acting privately to meet with the Contra Field Commanders as the "go-between" for Lt. Colonel North -- because Lt. Colonel North could not meet directly with the Contra leaders, in light of the United States Congressional ban against direct or indirect support being provided to the Contras by the Executive Branch of the United State government.

At this meeting with Source #7 in June of 1984, Defendant Robert Owen told Source #7 that Lt. Colonel North wanted Source #7 to travel to Costa Rica and there to attend, and then to file a published report concerning, a secret meeting which was to be held in Costa Rica among disparate Contra factional leaders seeking to form a group to be called UNO -- the United Nicaraguan Opposition. This was to be a coalition group of heretofore contesting Contra military leaders whom Colonel North wanted to unify, in order to increase the chances of the Administration to win Congressional approval to re-commence direct CIA funding and sponsorship of the anti-communist Contra forces.

Source #7 was surprised by the revelation made to him by Defendant Robert Owen -- so he sought me out immediately upon my return from Texas to discuss the legal implications of what he had learned.

After my late June 1984 discussion with Source #7, I prepared a legal opinion for Source #7. This legal opinion was provided to Source #7, a professional journalist, with a view towards establishing a full scale investigation to inquire into -- and to expose -- what was going on out of the White House office of Lt. Colonel Oliver North and in the states of Florida, Alabama, and Texas among these private para-military organizations and State National Guard forces.

During July of 1984, I traveled to the United States Middle District of North Carolina to conduct the depositions of members of the Ku Klux Klan, the American Nazi Party, the Federal Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the Greensboro City Police Department who had participated in the planning and execution of the armed assault upon the Workers Viewpoint Organization Anti-Klan March in which marchers were murdered in 1979. I was,therefore, absent from Washington until the end of 1984.

Indeed, throughout the first half of 1985, I was engaged full-time as Chief Counsel in the prosecution of the federal civil case of Waller v. Butkavitch, et al. in North Carolina.

Official, Covert U.S. Government Aid to Contras

Upon my return to Washington, D.C., in the second

half of 1985, I met with my sources involved in the Posey-Hull investigation -- and I was informed that an American ABC television cameraman had been very seriously injured in a May, 1984 terrorist bombing attack of the public press conference called by former Sandinista military commander Eden Pastora to denounce Adolfo Calero, Calero's FDN Contra organization, and the American Central Intelligence Agency for trying to destroy Pastora's independent and nationalist Nicaraguan anti-Sandinista force based in Costa Rica. I was informed by my sources that this American ABC television cameraman had discovered that he had been injured in an attack planned by Defendant John Hull and a Costa Rican-based anti-Sandinista terrorist group supplied with C-4 explosives by Defendants Thomas Posey, John Hull and Bruce Jones.

I expressed interest, on behalf of the Christic Institute, in hearing from this ABC television cameraman named Tony Avirgan, and I was, soon thereafter, contacted by Mr. Avirgan.

In my 1985 conversations with Tony Avirgan, with his fellow journalist wife Martha Honey -- and with sources who were in direct contact with them -- I learned the following facts -- the particular sources for which will be described later in this Affidavit.

That on July 17, 1979, Nicaraguan Dictator Anastasio Somoza fled Nicaragua in the face of virtual universal condemnation of his dictatorial and unjust regime, his unjust conduct having resulted, in early 1979, in the total cut-off of all military assistance to his regime by United States President Jimmy Carter under the dictates of the Congressional Harkin Amendment (prohibiting any U.S. military aid to any regime found to

have systematically violated the human rights of its own citizens).

Somehow, after the U.S. cut-off of military aid, Dictator Somoza had found another source of U.S. military equipment which enabled him to remain in office until July 17, 1979.

After his flight from Nicaragua, in July of 1979, former Dictator Somoza set up several of his dreaded National Guard Generals in Honduras, the neighboring country of Nicaragua, and proceeded to supervise them in the mounting of a "Contra" military operation against the 1979-officially-U.S.-recognized government of Nicaragua. No one seemed to know from whence these "Contra" forces (as they came to be called) were receiving their financing or their military supplies.

This "Contra" operation functioned under the direction of former Dictator Somoza himself until he was assassinated in September of 1980 in Paraguay. The operation was, then, taken over and run by his former generals from 1980 to 1981.

Still, no one knew who was funding or supplying this Contra force with military equipment.

When Ronald Reagan took office as President of the United States in January of 1981, a series of White House meetings took place -- attended by White House Chief of Staff Edwin Meese; White House National Security Advisor Richard Allen; United States CIA Director William Casey; United States Vice President (and Chairman of the National Security Council Task Force on Terrorism) George Bush -- and President Ronald Reagan himself. In these meetings, it was discussed, and later

agreed, that the United States CIA, under the direction of CIA Director William Casey, would "take over" the secret funding and military supply of the Honduran-based, "Contra" forces.

Reagan Orders the CIA to Back the Contras

In June of 1981, President Ronald Reagan signed a classified National Security Decision Directive expressly authorizing and directing United States Central Intelligence Agency Director William Casey to undertake the direct financing, training and military supply of the Honduran-based Contra forces -- but directing CIA Director William Casey to inform the contending Contra leadership that such CIA funding and supply of military equipment to the Contras was to be conditioned upon the Contra military commanders organizing themselves into a coherent and co-operative unified coalition through which a centralized system of financing and supply could be conducted by the Central Intelligence Agency.

In June of 1981, United States Central Intelligence Agency Director William Casey assigned to CIA agent Vincent M. Cannistraro the task of supervising the CIA supply of funds and military equipment to the Central American Contras. This operation began in June of 1981.

This operation proceeded, apace, throughout 1981 and into 1982 -- with United States President Ronald Reagan repeatedly publicly denying to the American people any CIA or White House involvement in supplying, training or funding the so-called Contra forces in Central America.

When press investigations and U.S. Congressional

inquiries publicly exposed the fact that the White House was secretly funding and supplying the Contras, President Reagan admitted the existence of "minor" assistance to the Contras by the CIA -- which assistance, President Reagan asserted, was limited solely to aiding the Contra in "interdicting the supply of weapons and military equipment flowing from the Sandinista government of Nicaragua to the anti-government forces in El Salvador."

When U.S. press and Congressional members pressed the Executive Department for proof of any such White House alleged gun shipments, the Central Intelligence Agency assigned CIA agent David McMichaels to prepare a CIA Report establishing such traffic. When CIA agent David McMichaels reported that there was no evidence to support the conclusion that any such weapons trafficking existed from the Nicaraguan government to the anti-government rebels in El Salvador, the CIA fired agent McMichaels.

President Reagan then altered his public position on the Contras again. This time, he asserted that the CIA was being authorized by the White House to support the Contras only to the degree necessary "to place military pressure on the government of Nicaragua 'to reform itself' to live up to the promise of the pluralistic society, economy and form of government 'promised' to the people of Nicaragua by the Sandinistas when they led the revolution against Somoza."

In 1983, the United States Central Intelligence Agency was caught, and publicly exposed, for having placed explosive mines in the civilian harbors of Managua -- and for passing out "manuals" to the Contras openly advocating the physical assassination of civilian government authorities inside Nicaragua to bring about the overthrow

of that government. Both of these acts were violations of international law. President Reagan, therefore, finally publicly acknowledged that it was his objective to violently overthrow the officially-recognized government of Nicaragua, "to prevent the establishment in Latin America of a Soviet military base."

A Congressional ban on "Direct or Indirect" Aid

After a national and international uproar over the conduct of the American CIA, Congress began to draft a piece of legislation to order the cut-off of all military assistance -- both direct and indirect -- by the United States Executive Department to the Central American Contras.

The "Privatization" of the Contra War

Upon learning of this plan of Congress, White House Chief of Staff Edwin Meese, Vice President Bush, Central Intelligence Agency Director William Casey, National Security Advisor Robert McFarlane and NSC staff member Lt. Colonel Oliver North met and devised a method for intentionally circumventing this Congressional ban.

In these meetings, this group decided to have Lt. Colonel Oliver North establish contact with the secret group of private individuals who had financed and supplied the military equipment to the Contras prior to June of 1981 -- and to notify them that the White House and the CIA would no longer be allowed to fund and supply the arms and
military equipment to the Contras after March of 1984.

In these meetings, this group also decided to have Lt. Colonel Oliver North establish contact with Gray &

Company (a Washington, D.C.- based public relations and advertising organization) and to have Rob Owen of that organization set up a private citizen-operated Contra support group to publicly solicit funds and assistance for the Contras after the up-coming prohibition of White House aid to the Contras. This operation would give a feasible explanation for the source of the funding and supply of the Contras -- so that Congress and the press would not conclude that the CIA was still supplying the Contras.

This public organization was set up by Rob Owen by contacting General John K. Singlaub -- who, in turn, set up the United States Council on World Freedom and began publicly raising funds for the Contras.

The Hull Terror-Drug Operation: A Defector's Story

From my late 1985 conversations with Tony Avirgan, Martha Honey and their sources, as well as from my direct personal conversations with one Carlos Rojas Chinchilla, Source #25, I next learned the following facts:

That in March of 1985, Carlos Rojas Chinchilla, a gainfully-employed professional carpenter residing in the city of San Jose, Costa Rica, was present at a public restaurant and bar named the Rendezvous Bar located a few blocks from the United States Embassy in Costa Rica.

While present in this bar, after finishing work, Carlos Rojas Chinchilla personally witnessed three men come into the Rendezvous Bar.

He saw them stop in the doorway for a short conversation and then Carlos saw two of the men leave the bar. The third man was left standing in the doorway.

After a few moments of standing in the doorway, watching the two other men depart down the street in the direction of the U.S. Embassy, the man who had remained behind in the doorway of the bar turned and began surveying the persons present in the bar.

This man's survey finally came to rest upon Carlos, and the man briskly walked from his watch at the doorway and moved into the bar to the table where Carlos sat.

The man told Carlos that his name was David, Source #26, and that he had gotten himself involved in a situation from which he needed someone's assistance to escape.

David explained to Carlos that David and his brother were Nicaraguans who had joined the Contra forces in Costa Rica to fight against the Sandinista government in Nicaragua. David explained that David had, somehow, come to be part of a Special Unit of the Contra forces in Costa Rica which made up a sort of "International Brigade" physically based on the ranch of an American rancher by the name of John Hull. David told Carlos that this American rancher was the supervisor of this Special Unit or International Brigade and that the group operated from John Hull's main ranch and other properties, some of which were located on the northern-most boundary of Costa Rica abutting the river which constitutes the southern border of Nicaragua.

Cocaine and a Plan to Assassinate a U.S. Ambassador

David told Carlos, in this early 1985 meeting, that this International Brigade supervised by John Hull had been directly responsible for the May 30, 1984 bombing of the Eden Pastora press conference -- and that the same group was, at that very moment, actively engaged in going

forward with a plan to carry out a terrorist bombing of the United States Embassy in San Jose, Costa Rica and a plan to assassinate the new United States Ambassador to Costa Rica, Lewis Tambs.

David stated to Carlos that the two men with whom David had arrived at the bar were, at that moment, "casing" the U.S. Embassy down the street in preparation for the future bombing of the installation.

David explained to Carlos that the International Brigade supervised by John Hull and housed on his ranch to the north of San Jose was directly involved in the trans-shipment of large quantities of Colombian cocaine from the airstrips on John Hull's farm (airstrips which had recently been lengthened and improved to accommodate aircraft arriving at John Hull's ranches with loads of military equipment, weapons, ammunition and explosives). Other sources informed the Plaintiffs that this cocaine came from one Jorge Ochoa and one Pablo Escobar, the two largest cocaine producers and exporters in Colombia -- and that the cocaine was being moved from John Hull's ranch into the United States where it was sold, a portion of the profits going to John Hull and his International Brigade to help finance the guns, ammunition and explosives being used in their military effort against the government of Nicaragua.

David told Carlos that in addition to bombing the Embassy, the International Brigade intended to kill a U.S. diplomat who he later identified as Ambassador Lewis Tambs. David told Carlos that the bombing and the assassination of Tambs would be made to look like the work of the Sandinista government of Nicaragua in an effort to instigate direct military action by the United States against Nicaragua.

Other sources later told the Plaintiffs that the International Brigade was also aware that Pablo Escobar had put a $1,000,000 dollar "bounty" on the head of

Ambassador Lewis Tambs. Escobar was reportedly infuriated at the efforts made by Tambs, when Tambs was U.S. Ambassador to Colombia, to obtain an extradition treaty between Colombia and the U.S. which would allow the extradition of Escobar and other cocaine traffickers to the U.S. for prosecution for drug smuggling. The International Brigade hoped to additionally collect the $1 million bounty to aid them in their purchase of military equipment for use in their military effort against Nicaragua.

David told Carlos in this conversation that David did not want to participate in this International Brigade any longer -- that he did not support the activities of the group directed against the U.S. Embassy and Ambassador Tambs and he did not support the activity of the group involved in drug smuggling to finance their operations.

But David told Carlos that David needed help in escaping from the group -- that everyone in the group was watched by everyone else, as a precaution against dissention and revelation of their activities. David needed an "outside" person, someone who could help David and his brother (who was fighting elsewhere with the Contras), escape without observation by members of the International Brigade. David asked for Carlos' help.

Carlos refused, pointing out to David that Carlos was a married man, with a wife and three children -- and that Carlos lived in a small row house with his wife's beauty shop on the ground floor, a place where any stranger, such as David or his brother would surely be noticed if they tried to hide there.

David pleaded for Carlos to help and told Carlos to look for him around the Embassy or at a town in northern Costa Rica, if Carlos decided to help him.

Then David was gone, as the two men with whom he had arrived returned.

Carlos went out of the bar after the men left and saw them enter a large, gray car, without any license plates, and depart.

Carlos went to the home of his mother and informed her as to what had occurred and sought her advice. She directed him to stay out of it and to do nothing.

In a move to enforce Costa Rica's official policy of neutrality towards Nicaragua, Costa Rican Rural National Guardsmen raided, in late April 1985, a contra camp located on property near the Nicaragua border managed by John Hull. They arrested nine Nicaraguan contras, five foreign mercenaries including two Americans, and seized significant
amounts of guns, cannons, ammunition and explosives. This equipment included guns and military equipment smuggled from Florida's Ft. Lauderdale Hollywood Airport on March 6, 1985, by Sources #14, #15, #16 and #17, and Defendants John Hull, Bruce Jones and Thomas Posey.

Indeed, specific weapons expressly purchased and registered in the United States by Defendant Thomas Posey were seized by the Costa Rican Rural Guard on John Hull's ranch in early 1985, and are presently available as evidence.

When Carlos Rojas Chinchilla learned of this Rural Guard action, he realized that the description of the ranch, the name of the owner of the ranch and the description of the man arrested and the equipment seized all matched, exactly, the description of the International Brigade described by David to Carlos in their early 1985 meeting at the Rendezvous Bar.

This caused Carlos grave concern, since this

ability of David to describe so exactly the characteristics, equipment and locale of the International Brigade arrested by the Costa Rican Rural Guard convinced him that David had communicated to him equally accurate information about the plans of the group to bomb the U.S. Embassy and to assassinate U.S. Ambassador Lewis Tambs.

Following the arrest of the mercenaries on Hull's property, Carlos Rojas Chinchilla realized that David's story had some basis in fact. He sought the counsel of the only North American he knew, a woman neighbor married into a Costa Rican family friendly with his family. Carlos communicated the information to the members of this North American family, Sources #29, #30, and #31, which had been told to him by David.

As it turned out, the daughter of this North American family, Source #31, knew the Plaintiffs Tony Avirgan and Martha Honey and, following her receipt of this information from Carlos, Source #31 contacted Tony Avirgan and Martha Honey and informed them of the content of the meeting between Carlos and David.

Tony Avirgan and Martha Honey, through Source #31, contacted Carlos Rojas Chinchilla in 1985 and persuaded Carlos to attempt to reestablish contact with David.

In 1985, Carlos did reestablish contact with David -- and, at the request of Tony Avirgan and Martha Honey, Carlos met with David and asked David to explain, in detail, the information David possessed about the La Penca bombing, about the activities of the so-called "International Brigade" of Contra supporters operating from John Hull's Costa Rican ranch -- and about what David knew about the future plans of this Brigade.

In a series of meetings between David and Carlos held over the ensuing weeks, David shared with Carlos the information which follows -- some of which was tape recorded by Carlos and some of which Carlos orally repeated to Tony Avirgan, Martha Honey and Source #31 immediately after his interviews with David.

Both Tony Avirgan and Martha Honey spoke, by telephone, with David, confirming his existence, his name and his possession of the general information set forth below. But David would not meet directly with the journalists. However, Plaintiff Avirgan did physically see David at a distance, meeting with Carlos, on one occasion -- from which meeting Carlos returned and shared more information with the Plaintiffs which came from David.

In his direct interviews with David, Carlos was given the following information -- which fact Plaintiffs' Counsel has personally confirmed from direct interviews with Carlos.

David told Carlos that David and his brother, who were Nicaraguan citizens, had grown disillusioned with the Sandinistas government in Nicaragua, and left Nicaragua and had joined the Contra forces based inside Costa Rica.

David's brother was no longer with David, but was, rather, off fighting somewhere else with the Contras against the Nicaraguan government.

David had somehow come to be assigned to a group of men made up of Nicaraguan Contras, ex-patriot Cubans from Miami, foreign mercenaries, and soldier of fortune types who were based upon the cattle ranch and citrus farms owned or managed, directly on the Costa Rican side

of the Costa Rican-Nicaraguan border, by a millionaire American rancher by the name of John Hull, the same John Hull named as a Defendant in this suit.

Working with John Hull was another American rancher who owned a ranch near that of John Hull. This man's name was Bruce Jones, and is the same Bruce Jones named by Plaintiffs as a Defendant in this suit.

Both Hull and Jones had earlier been directly associated with agents of the American Central Intelligence Agency and had given over their ranches as "staging areas" for the landing and off-loading of American CIA-supplied weapons and ammunition which were being supplied by John Hull to the Contra forces based in Costa Rica and just across the border inside Nicaragua. This information came from sources other than David, prior to contact with David.

David was a part of this "International Brigade" of Contras and mercenary Contra-supporters and shared the Contra desire to overthrow the Nicaraguan Sandinista government by military force.

However, in 1983, one of the Costa Rican-based military commanders of the Contras, who was being supplied with military equipment by the American CIA through John Hull, one Eden Pastora, began to have difficulty with Hull and the CIA's man who was repeatedly on John Hull's ranch. This CIA man was one Duane "Dewey" Claridge. As a result, the CIA kept starting, and then stopping, the supply of arms to Eden Pastora. Hull and Dewey Claridge were angry with renegade Contra commander Pastora, because Pastora would neither accept supervision from American CIA personnel sent in to Costa Rica to provide "advice" to Pastora, nor would Pastora

agree to integrate his Costa Rican-based Contra forces into a unified Contra command under the leadership of the Honduran-based FDN led by one Adolfo Calero and former Nicaragua dictator Anastasio Somoza's former National Guard generals. (This information came from sources other than David -- prior to David's contact with Carlos -- as did the information in 50.8 to 50.10 below.)

In mid-1983, a number of Cuban-Americans from Miami arrived at John Hull's ranch and asked John Hull to arrange a meeting between these Cuban-Americans and representatives of Contra commander Eden Pastora -- with a view toward Pastora's agreeing to allow these Cuban-Americans to bring down to Costa Rica a number of their Miami-based Cuban-American associates to fight against the Sandinistas as part of Eden Pastora's ARDE forces.

Contra Cocaine to the U.S.

When this request of the Cuban-Americans was rejected by Pastora in May or June of 1983, two of these Cuban-Americans, one Felipe Vidal and one Rene Corbo began setting up a cocaine trans-shipment operation on John Hull's ranch.

Felipe Vidal and Rene Corbo coordinated the landing of small planeloads of cocaine flying onto John Hull's ranch --and onto the numerous other ranches "managed" by John Hull which were adjacent to Hull's ranch along the Costa Rican border with Nicaragua. The cocaine on these planes came from one Jorge Ochoa and one Pablo Escobar -- the two biggest cocaine producers and traffickers in Colombia. On John Hull's ranches, this Ochoa-Escobar cocaine was off-loaded and then

trans-shipped up into the United States, going to Miami, New Orleans, and Memphis.

David told Carlos that David was totally opposed to this cocaine smuggling. But he said that a portion of the income earned by John Hull, Felipe Vidal, Rene Corbo and their fellow Contra-supporters by their participation in this drug smuggling network was being used to help finance the purchase of military equipment, ammunition and explosives needed by the Contras to wage their private war against the Sandinista government.

This drug smuggling dimension of the John Hull-International Brigade caused David to seriously consider fleeing from the operation.

But he did not.

The La Penca Press Conference Bombing

Carlos asked David to explain the role which members of this International Brigade of Contras had played in the May 30, 1984 terrorist bombing attack on the Eden Pastora press conference at La Penca, Nicaragua.

David went into great detail explaining this role -- informing Carlos that David had been personally informed of his information by Alvaro Cruz and Frederico Saenz, the two men on John Hull's ranch under whose direct supervision David operated in his activities as part of the Contra International Brigade.

Cruz and Saenz had informed David that the preliminary decision to assassinate Eden Pastora had been made by John Hull, Felipe Vidal, Rene Corbo and Adolfo Calero in a series of meetings in or around January of

1984 -- when it became clear to these men that Pastora was neither going to allow non-indigenous Nicaraguans, such as the Cuban-Americans, to participate in his Costa Rican-based ARDE military effort against the Nicaraguan government nor was Pastora going to allow his Costa Rican-based ARDE forces to be melded into a unified Contra command under the leadership of Adolfo Calero's Honduran-based FDN Contra force.

David reported that this January, 1984 preliminary decision to kill Pastora had been made in meetings held on John Hull's ranch among Hull, Vidal and Corbo and, later, between these men and Adolfo Calero in Honduras.

Other sources reported that this preliminary decision was finalized in a meeting in Miami, Florida in February of 1984, between Vidal and Corbo and their "sponsor" Francisco "Paco" Chanes.

It was Cruz and Saenz who informed David of the 1984 decision to conduct the bombing of Pastora. Other sources set forth below have verified specific steps in this chain of events. They are as follows:

In February of 1984, Felipe Vidal and Rene Corbo flew from San Jose, Costa Rica to Miami, Florida -- where they met personally with Francisco "Paco" Chanes. Chanes was the de facto owner of two Miami-based seafood import companies. These were Ocean Hunter, Inc. and Mr. Shrimp. These two private companies were, in fact, the vehicles through which Francisco "Paco" Chanes smuggled into the United States up to one full ton of Colombian cocaine each week -- from Jorge Ochoa and Pablo Escobar, via John Hull's Costa Rican ranch. "Paco" Chanes was also an ardent financial supporter of the ultra right- wing, Miami-based, Cuban anti-communist

organization "Brigade 2506." Silent partners in Chanes' two "seafood import" companies were Frank Castro and Rolando Martinez -- fellow intense anti-communists.

In this February, 1984 meeting in Miami held between "Paco" Chanes and Vidal and Corbo, Chanes gave his final approval to the participation of Vidal and Corbo in the assassination of Eden Pastora.

Vidal and Corbo then sought advice from Chanes as to whom they might retain to carry out this assassination. Paco Chanes sent Vidal and Corbo to meet with Frank Castro and Rolando Martinez.

Vidal and Corbo met with Frank Castro and Rolando Martinez in Miami in February of 1984 and were, in turn, sent to see one Niles Heinz. Heinz, in turn, sent Vidal and Corbo to meet with one Ramon Cecilio Palacio -- a man reported to be the "chief of security" in Miami for Jorge Ochoa.

In February of 1984, Vidal and Corbo met, in Miami, with Ramon Cecilio Palacio -- who placed them in the hands of two Cuban brothers introduced to them as Ricardo and William "Gris". These two men are believed by Plaintiffs' Counsel's sources to be, in fact, one Raul Villaverde and one of his two brothers -- either Rafael (if he was not earlier killed in a yacht explosion in Miami) or Jorge, a cocaine smuggler associated with Palacio and Ochoa.

The "Gris" brothers took the men to Chile and introduced them to Amac Galil, a notorious international right-wing terrorist who was, at the time, working for the dreaded secret military police of Chilean dictator Pinochet.

Galil was paid $50,000 to plan and execute the assassination of Eden Pastora.

Between March and May of 1984, Amac Galil travelled through Panama up into Costa Rica -- where he went to John Hull's ranch. On John Hull's ranch, Galil obtained from John Hull three kilograms of C-4 explosive -- portions of which had been smuggled onto John Hull's ranch through the combined efforts of Defendants Theodore Shackley, Thomas Clines, Richard Secord, Albert Hakim, Rafael "Chi Chi" Quintero, John Hull, Bruce Jones, Thomas Posey, Ronald Martin, James McCoy, and Mario Delamico.

John Hull met repeatedly with Galil while Galil was in Costa Rica. Indeed, John Hull travelled with Galil, by car, from Hull's ranch, up to the Nicaraguan border, where Galil took numerous photographs of the area, and then returned with Hull to Hull's ranch. These facts have been independently corroborated by Plaintiffs' Counsel by direct interviews between our investigators and two sources who were eyewitnesses to Galil's presence on John Hull's ranch prior to the La Penca bombing. These are Sources #32 and #33.

In May of 1984, Amac Galil left John Hull's ranch and took up residence at the Grand Via in San Jose, where he used the false identity of a Danish journalist by the name of Per Anker Hansen.

Under this false identity, Galil obtained employment with a Swedish film crew and, later, obtained access to the press conference held by Eden Pastora at La Penca on May 30, 1984.

Galil detonated the C-4 bomb concealed in an

aluminum camera case -- using a remote control radio transmitter -- killing, maiming, and severely injuring the international journalists and parties listed in the Plaintiffs' Complaint on May 30, 1984.

As described by Cruz and Saenz to David, Galil escaped
in the following manner: he fled using a truck owned by Defendant Hull with assistance of various of the other defendants.

Kidnappings, Death Threats, and Murder

At the conclusion of one of the several interviews held between Carlos and David in a public park in San Jose, Costa Rica, in 1985, David and Carlos were seized on the sidewalk next to the park by a small group of armed men whom David later identified to Carlos as associates of John Hull and Hull's International Brigade of Contras.

These men forced David and Carlos, at gunpoint, onto the floor of the back seat of a car and drove them, for hours, to the main ranch of John Hull, at the northern border of Costa Rica. There David and Carlos were held by an armed guard, in a small wooden shed, while the other men went "to contact John."

David told Carlos that David was sure that the men were going to kill David and Carlos when they returned -- so he persuaded Carlos to join with him in an escape. David and Carlos attacked the lone armed guard left to detain them, broke the window out of the shed in which they were held captive, and fled into the forest -- amid a hail of gunfire from their guard.

After days and nights spent in the forest, David and Carlos came to a road, obtained a ride on a truck to a small village -- and Carlos telephoned Tony Avirgan and asked that Avirgan come to get them.

David refused to go with Avirgan and effect his escape, wanting to get away from the situation which was threatening his life. So, David left Carlos, who waited in a park to be picked up by Tony Avirgan. David promised, however, that he would contact Carlos to let Carlos know that David was safe.

The Plaintiffs were later informed by a member of the Costa Rican Rural Guard, Source #34, that an agent of the Costa Rican Rural Guard placed undercover on John Hull's ranch, Source #35, reported to Costa Rican authorities that he had later seen David recaptured and physically brought to John Hull's ranch -- where David was beaten and tortured to death on John Hull's ranch.

Carlos reported his kidnapping to the Costa Rican legal authorities and these authorities searched, with Carlos, for the property, and the wooden shed, where Carlos and David had been held. This search by the authorities lead to the ranch of John Hull on the Costa Rican-Nicaraguan border.

Soon after the reported recapture and torture-execution of David, Plaintiffs Tony Avirgan and Martha Honey began to receive telephoned death threats -- ordering them "to stop your investigation or be killed." These threats then began to take the form of notes, made up of letters from the alphabet cut from magazines, notes which were physically placed under the door of their home -- where they lived with their two small children.

These death threats, and similar death threats directed to their employees and office staff, required the Plaintiffs to spend thousands of dollars to install a physical security system in their office and home. The continued death threats required the Plaintiffs to send their children out of the country to stay with the Plaintiffs' family in New York State -- and to live under an armed guard provided to them by the Costa Rican legal authorities, Source #36.

After a thorough investigation of the information provided to them by David, by Carlos -- and by numerous other sources; including Costa Rican law enforcement authorities, Sources #37 and #38; ARDE Intelligence Officials, Sources #39 and #40; interviews with Defendant Felipe Vidal himself, Source #41; and interviews with former Contra members, Sources #42, #43, #44, and #45 -- Plaintiffs Tony Avirgan and Martha Honey prepared a written report of their findings and publicly released this report at a press conference held in San Jose, Costa Rica in the Fall of 1985.

After this report, Carlos Rojas Chinchilla was kidnapped, a second time, by associates of John Hull. These men seized Carlos from his house in San Jose and, at gunpoint, ordered him to copy, in his own handwriting, a prepared statement they showed him -- stating that he had been told nothing by David about John Hull -- and that his earlier reports filed with the Costa Rican legal authorities about David's reports, and Carlos' kidnapping by associates of John Hull's were all made up by Carlos at the demand of journalists Tony Avirgan and Martha Honey.

Carlos was told by these men that, after writing this, Carlos would be released, unharmed -- but that, in two

weeks time, Carlos would, again, be contacted by these men and brought before a "specially selected" group of journalists where Carlos was to publicly release his written statement and renounce his police reports about John Hull.

After writing the demanded statement, Carlos was released -- and he fled to Tony Avirgan and Martha Honey and requested protection.

The Plaintiffs assisted Carlos in escaping from Costa Rica with his family and secured a safe place for him to remain -- until he was called upon to testify in the trial of John Hull.

All of these facts have been verified directly to Plaintiffs' Counsel Daniel Sheehan in personal interviews between Attorney Sheehan and Carlos Rojas Chinchilla.

In the Fall of 1985, Defendant John Hull sued Plaintiffs Avirgan and Honey in Costa Rica, charging them with criminal libel.

In the Fall of 1985, I was contacted by a Source, Source #46, and was informed about Plaintiffs Avirgan and Honey's information from David and their numerous other sources -- and, finding that this information was closely related to information provided to the Christic Institute by our Sources regarding the smuggling of guns, ammunition and explosives to John Hull's ranch from Florida, via Ilopango Air Force Base in El Salvador, I asked that my Source #46 have Tony Avirgan and Martha Honey contact me -- so we could cooperate in our respective investigations.

For a period of time, Source #46 communicated

information back and forth between our Christic Institute investigation and Tony Avirgan and Martha Honey.

In December of 1985, my law office was asked by Tony Avirgan and Martha Honey to assist in the preparation of their defense against the charges of criminal libel in Costa Rica. We agreed to do so.

The Secret Team

During my preliminary investigation of the information in the possession of Tony Avirgan, Martha Honey and their sources - I was contacted by Source #47, a right-wing para-military specialist, former U.S. Army pilot in Vietnam and military reform specialist in January of 1986.

Source #47, the Specialist, who was unaware of my investigation, informed me that he had met -- at a right-wing function -- a former U.S. military intelligence officer, Source #48, interested in seeing to it that the Mujahedin forces in Afghanistan were supplied with safe and effective military equipment with which to combat the Soviet invasion of their homeland.

Source #47 informed me, however, that, upon his second meeting with Source #48, this source began to discuss with Source #47 the existence of a "Secret Team" of former high-ranking American CIA officials, former high-ranking U.S. military officials and Middle Eastern arms merchants -- who also specialized in the performance of covert political assassinations of communists and "enemies" of this "Secret Team" which carried on its own, independent, American foreign policy -- regardless of the

will of Congress, the will of the President, or even the will of the American Central Intelligence Agency.

Source #47 was so shocked at this information that he wanted me to meet with Source #48, to interview him, and to evaluate the information this man had.

I agreed to do so. The meeting was set up for February, 1986, at the home of Source #47 outside of Washington, D.C.

The Wilson Connection in Iran

In February of 1986, I went to the house of Source #47, and was introduced to Source #48. He was a former U.S. intelligence officer who served in Iran in 1976 and for a period thereafter.

In our interviews, Source #48 set forth the details of a highly secret assassination project which operated in Iran from 1976 until the fall of the Shah - under the supervision of Defendant Theodore Shackley and Defendant Thomas Clines. This project was supervised, in the Middle East by one Edwin Wilson. Source #48 -- who worked as an anti-terrorist specialist in the U.S. Military Mission in Iran, was in a special position to have personal knowledge about the project run by Edwin Wilson - since Wilson's program operated under the rubric of an "anti-terrorist" project.

Source #48 set forth, in detail, how this covert "anti-terrorist" search and destroy operation was set up, in 1976, under the overall supervision of the Assistant Deputy Director of Operations for the American Central Intelligence Agency - Theodore Shackley, and his Deputy, Thomas Clines. However, Source #48 was convinced that

this operation became a criminal, privately run, non-CIA authorized program as of 1977 - after President Jimmy Carter and CIA Director Stansfield Turner entered the government.

This privately-run, "anti-terrorist" assassination program was authorized and controlled by Theodore Shackley and Thomas Clines - in their purely private, non-governmental capacity, from 1977 to 1979.

During this 1977 to 1979 period, Edwin Wilson, in his private capacity as the field director of this private Shackley-Clines project, established contact, in Libya, with Mohammar Gadhafi and secretly agreed to train Libyan anti-Shah of Iran terrorists in the use of deadly C-4 explosives at five secret terrorist training camps located inside Libya. While entirely criminal in nature, Edwin Wilson's activities with these Libyan terrorists were actually intelligence-gathering activities - designed to put into his hands the identities, missions and targets of the Libyan, anti-Shah terrorist operations.

Once this intelligence information was obtained by Wilson in his capacity as a trainer and supplier for the terrorists, Wilson would secretly communicate the identities, and mission of particular terrorists to Rafael "Chi Chi" Quintero - who was responsible for "interdicting" and directing the assassination of these Libyan terrorists.

Indeed, part of the "mission" of Wilson inside Libya was to carry out the assassination of Mohammar Gadhafi himself. Pursuant to this plan, Wilson arranged for Gadhafi's plane to be "wired-up" and bombed. The plane was blown up - but, at the last moment before the plane took off, Gadhafi returned from the tarmac to receive a telephone call. Several East German agents were killed in

the explosion.

This operation of Wilson's was "blown" when one of Wilson's associates here in the United States, one Kevin Mulcahey, unknowingly revealed to a person friendly with an agent of the Federal Bureau of Alcohol, Tobacco and Firearms, that his boss, Edwin Wilson, was training and supplying Libyan terrorists.

Wilson and his associate Frank Terpil were indicted for their dealings with Gadhafi -- but his supervisors, Theodore Shackley and Thomas Clines, were allowed to resign from the CIA by CIA Director Stansfield Turner and Deputy Director Frank Carlucci.

However, upon resigning, Defendants Shackley and Clines joined with Defendants Secord and Hakim and "went private" - continuing to run their "Secret Team" -- complete with it's own covert foreign policy.

Plaintiffs' Counsel learned this information not only from Source #48, but also from Source #49 - who is a retired CIA officer with knowledge about this operation and a Source #50 - who is a former Air Force officer of the Special Investigation Office who investigated Edwin Wilson's activities in the Middle East.

Source #49 has had direct conversations with Source #50 who was directly involved with Edwin Wilson in this Middle Eastern Operation.

Supplying the Contras

Source #49 has direct knowledge that it was this "Secret Team" of Defendant Shackley, Defendant Clines, Defendant Secord and Defendant Hakim - operating

through their business partnership with Edwin Wilson named the Egyptian-American Transport and Service Company (incorporated in January of 1979) who first established contact with and began secretly supplying weapons, ammunition and C-4 explosives to the Contras soon after they began operations in Honduras in August of 1979 and who later, under a separate corporate cover, supplied C-4 explosives and military equipment to the Contras, through John Hull, in Costa Rica in 1983 and 1984. The "Field Officer" for this "Secret Team" was Defendant Rafael "Chi Chi" Quintero, the man who met with the field commanders of the Contras in Honduras and the Contra associates of John Hull in Costa Rica to take their "orders" for weapons and explosives and who saw to it that said military supplies were delivered. Defendant Quintero conducted his activities on behalf of this Secret Team through a Florida-based corporation named Orca Supply Company -- a company earlier set-up by Edwin Wilson.

This information was obtained by Plaintiffs' Counsel from Source #49 and from persons who have spoken directly with persons directly involved in this operation.

Under the supervision of Defendant Theodore Shackley, Defendants Thomas Clines, Richard Secord, Albert Hakim and Rafael Quintero have been directly responsible for the private supplying of military equipment -- including the C-4 explosives supplied to John Hull in 1983 and 1984 which were used in the terrorist bombing attack at La Penca on May 30, 1984. Indeed, a close associate of Defendant Quintero trained persons in Honduras to make deadly C-4 anti-personnel terrorist bombs identical to the one used at La Penca. This individual was one John I. W. Harper. These Defendants were responsible for the entire

supply of weapons, ammunition and explosives to the Contras in Honduras and Costa Rica from August of 1979 up to October of 1986 -- with the exception of the time period between June of 1981 and March of 1984, during which time American CIA Director William Casey and his agent Vincent M. Cannistraro supplied such materials.

Defendants Martin, McCoy, Delamico, Posey and Chanes contributed military supplies directly to this flow of equipment supplied by Defendants Shackley, Clines, Secord, and Hakim during this time period -- including a portion of the C-4 used to construct the C-4 bomb used at La Penca in the attempted assassination of Eden Pastora.

Moreover, Ricardo and William "Gris" are reported, by a source, Source #51 -- a former Contra member active in the Miami area with direct knowledge of the Miami Contra community -- to be one Raul Villaverde and his brother, either Rafael or Jorge Villaverde. The Villaverde brothers are close associates of Defendant Rafael Quintero, who worked with Defendant Quintero as professional assassins for Edwin Wilson in Iran and Libya between 1976 and 1980. According to Source #51, it was in Iran and Libya, while working for Wilson, that Raul and Rafael Villaverde met Amac Galil, the right-wing, anti-Gadhafi Libyan terrorist whom the Defendants actually procured to carry out the La Penca bombing.

In April of 1986, Plaintiffs' Counsel was introduced to Source #52, a high-ranking, active, Central Intelligence Agency official who discussed with Sources #48 and #49 the activities of Defendant Shackley and Clines and confirmed to them a number of the facts set forth above.

At that time, Plaintiffs' Counsel also met personally with Source #53, another high-ranking, active, Central

Intelligence Agency official, who confirmed much of the data concerning the political environment and activities of persons involved in the Contra movement in Costa Rica in 1984 -- and the names of the persons involved in the Contra operations in Costa Rica in 1984, at the time of the La Penca bombing.

In early 1986, Plaintiffs' Counsel established contact with Source #54, a man actively engaged in the trafficking of cocaine with Defendant Francisco "Paco" Chanes and Defendant Dagoberto Nunez, which source communicated to Plaintiffs' Counsel detailed information confirming the participation of Defendants Chanes, Nunez, and Hull in the smuggling of cocaine into the United States through Miami and Memphis. Source #54 supplied Plaintiffs' Counsel with the names and whereabouts of some half-dozen pilots who flew guns, ammunition and C-4 explosives from the United States to John Hull's ranch in Costa Rica -- and who flew cocaine back into the United States from Defendant Hull's ranch. A number of these pilots have been located and contacted by Plaintiffs' Counsel, but they insist upon immunity from criminal prosecution in exchange for their testimony against the Defendants in this case. These pilots constitute Sources #54, #55, #56, #57, #58, and #59.

Plaintiffs' Counsel has established direct contact with Edwin Wilson, who is serving a federal prison term in excess of 50 years at Marion Prison in Illinois and has spent hours in private interviews of Wilson. Mr. Wilson also requests immunity from criminal prosection in exchange for his testimony demonstrating the truthfulness of the information set forth above about his activities with Defendants Shackley, Clines, Secord, Hakim and Quintero. Edwin Wilson is Plaintiffs' Source #60.

Plaintiffs' Counsel has also personally interviewed Source #61, a Costa Rican pilot with intimate knowledge of the cocaine smuggling operations of Defendants Hull and Nunez -- and of the fact that the income from their smuggling activities is being used to fiance the Contra operations of the Defendants in Costa Rica. Source #61 introduced Plaintiffs' Counsel to Source #62, a Roman Catholic Priest from Costa Rica who has personally interviewed numerous peasants in Costa Rica who have come to know with direct personal knowledge of Defendants Hull and Nunez cocaine smuggling operations -- and their partnership in these operations with Defendant Francisco "Paco" Chanes in Miami.

Plaintiffs' Counsel's investigators have interviewed Sources #63, #64 and #65 who are active agents of the Federal Drug Enforcement Administration who are directly knowledgeable concerning the cocaine smuggling operation of Defendants Chanes, Vidal, Corbo, Nunez, Hull, Ochoa and Escobar and the use of a portion of the profits from this enterprise to fund their Contra operations in Costa Rica.

Plaintiffs' Counsel has personally interviewed Source #66, an active Florida state law enforcement intelligence officer, who is familiar with the drug smuggling -- and illegal gunrunning operations of the defendants -- but who has been directed to "stand clear" from his investigation of their activities.

The First "Contra War": Organized Crime and Right-wing Terror-Politics

Sources #48 and #49 described above, as well as Sources #67 and #68, who are tenured professors at

accredited universities in the U.S. who conduct professional research into government documents, interview persons in the U.S. intelligence community, and teach accredited courses regarding the history of the activities of our American intelligence community --- as well as Source #69, who is a retired official of the United States Customs Department and the Federal Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement Administration), and Source #70, who is a former Southeast Asian Border Police officer, and Source #71, who is a retired CIA official - - have communicated evidence to Plaintiffs' Counsel which constitutes probable cause to believe that the following facts are true regarding the Defendants in this case:

That, in late 1959, immediately after Fidel Castro drove Dictator Batista out of Cuba, former United States Vice President Richard M. Nixon established, and chaired, a Special Committee within the United States National Security Council with the express assignment of developing -- and executing -- a plan by means of which to mount a covert "Contra" war against the socialist government of Cuba, utilizing expatriate indigenous right-wing Cubans who had been loyal to Dictator Batista. The objective of this non-Congressionally authorized operation was to undermine, weaken, and eventually, overthrow the revolutionary socialist government of Cuba. It appears that this secret operation was then code-named "Operation 40."

That, in late 1959, then Vice President Richard M. Nixon, with the direct participation and cooperation of United States Central Intelligence Agency Director Allen Dulles, undertook the supervision of the recruiting of expatriate, right-wing Cubans who had fled from Cuba to Miami, Florida -- and caused to be established two secret

military training bases for their "Contra" forces, one south of Miami, Florida, and one in Guatemala. CIA Director Allan Dulles assigned CIA Agent and former Marine Corps officer Carl Jenkins to supervise the training of these "Contra" forces in guerilla warfare tactics in Florida and Guatemala. The objective of this Nixon-Dulles supervised operation was to train and to secretly infiltrate these expatriate Cubans back into Cuba, where they would set up centers of guerilla military resistance to the Castro-led socialist government. These forces would also mount terrorist military attacks against the economic infra-structure of Cuba, making it difficult for the new revolutionary government to organize and operate the economy.

With this covert NSC-CIA program underway in early 1960, then Vice President Richard M. Nixon secretly "reached out" to one Robert Maheu, the Chief of Staff and de facto Director of billionaire Howard H1ughes' financial empire. At the time Maheu was working with Nixon on a secret, non-Congressionally approved project which may have involved underwater activities and been named "Operation Desktop". Because of Maheu's secret status known only to Richard Nixon and President Eisenhower, Richard Nixon selected Maheu to attend an equally secret meeting, in early 1960, in Florida, with two men representing former Havana Mafia "Don" Santo Trafficante -- whose fabulously wealthy Havana Casino, Hotel and prostitution operation run by Resorts International, Inc. (a Meyer Lansky Mafia company) had been driven out of Cuba, along with Trafficante's business associate Batista in 1959.

At this early 1960 Florida meeting between Robert Maheu (representing Richard Nixon) and John Roselli and Sam Giancana (representing Santo Trafficante, a

Meyer Lansky Mafia Lieutenant), it was agreed between Richard Nixon and Santo Trafficante that the NSC's secret Operation 40 would be secretly "supplemented" by secreting, within this operation, a "private" sub-operation -- which was to be supervised directly by the Mafia's Havana Lieutenant Santo Trafficante.

This secret, "private" unit was to be a political assassination unit assigned to murder Cuban President Fidel Castro, his brother Raul Castro, Che Guevera and five other revolutionary Cuban government leaders.

Former associates of Cuban dictator Batista and of Resorts International boss Santo Trafficante were, according to this early 1960 Nixon-Trafficante agreement, to be selected out of the Operation 40 participants by Santo Trafficante -- and then secretly trained, as political assassins, by Trafficante and his Mafia associates, at a secret "Triangular-Fire Training Base" to be located in Mexico. Those selected from Operation 40 by Santo Trafficante to become members of the "Shooter Team" were:

1. Rafael "Chi Chi" Quintero;
2. Felix Rodriguez (AKA "Max Gomez");
3. Luis Posada Carriles (AKA "Ramon Medina");
4. Rafael Villaverde;
5. Raul Villaverde;
6. Ricardo Chavez;
7. Frank Fiorini (AKA Frank Sturgis);
8. Rolando Martinez; and two other Cuban Americans.

One of the "supervisors" of the group was to be E. Howard Hunt, code-named "Eduardo."

This secret "Shooter Team" began training in early 1960.

When John F. Kennedy received the Democratic Party nomination for President in the Summer of 1960, he was briefed by a CIA officer about the existence of Operation 40 and its objectives -- but it does not appear that he or Robert Kennedy were ever briefed about the existence of the Shooter Team. However the Shooter Team continued to train -- and, indeed, between 1960 and 1963, initiated several efforts to assassinate Cuban President Fidel Castro.

Between January of 1961 and April of 1961, the low-profile, guerilla-infiltration strategy of Operation 40 was transmuted in a plan for a full-scale military invasion of Cuba, to be staged at the now- infamous Bay of Pigs. This invasion, using the personnel of Operation 40, failed disastrously in April of 1961.

However, by June of 1961, Robert Kennedy had re-grouped the tattered remnants of the old Operation 40 forces and re-initiated the old, lower-profile, strategy of infiltration and guerrilla "raids" into Cuba. This re-born Operation 40 was named "Operation Mongoose." This covert "Contra" war was secretly pursued by the Kennedy Administration from June of 1961 to November of 1963.

The supervisor of "Operation Mongoose" was, then 34-year-old, Theodore Shackley. His Deputy was Thomas Clines.

This operation, functioning in a working partnership with Mafia Lieutenant Santo Trafficante, operated from a base located in a few buildings on the

campus of the University of Miami. This base -- and the operation itself -- came to be called "JM/Wave."

These "Contra" war operations -- and their associated Trafficante- lead political assassination sub-operation -- were directed by Theodore Shackley and Thomas Clines from 1961 to 1963.

During 1963, several participants in Operation 40 were caught smuggling narcotics into the U.S. from Cuba and the use, by the Batista and Trafficante criminal associates in the program began to cause "problems of control" of illegal "profiteering" in the program. But the program continued -- as did the operations of the "Shooter Team."

In November of 1963, President Kennedy was assassinated in Dallas, Texas.

In 1965, "Operation Mongoose," and JM/Wave, were shut down and Theodore Shackley and his Deputy, Thomas Clines were transferred to Laos.

The Move to Southeast Asia: Political Assassination Financed by Opium

In 1965, Theodore Shackley was made the Deputy Chief of Station for the CIA in Laos. Thomas Clines became his Deputy.

In 1965, Theodore Shackley and Thomas Clines secretly
provided air support in Laos for one Van Pao, in a three-sided war in which Van Pao was engaged, in Laos, for control of part of the illegal opium trade in that nation. During 1965, Van Pao's competitors in the opium

trafficking business were mysteriously assassinated.

By 1966, Van Pao was one of the major opium producers and traffickers in Laos.

Under the direction of Deputy Chief of Station Theodore Shackley and his Deputy, Thomas Clines, a secret program was pursued to train indigenous Hmong tribesmen in guerilla war tactics for use in "unconventional warfare" activities. These activities included the art of political assassination. Starting in 1966, their "special operations" with the Hmong tribesmen began to be secretly financed by Van Pao.

In 1964, a "Special Operations Group" was established in Saigon, Viet Nam. This group was a multi-service, military operation known as the Military Assistance Command, Vietnam -- Special Operations Group (MACV-SOG) or the Joint Task Force for unconventional warfare.

This group, among other tasks, "supervised" the secret political assassination activities of this secret unit of Hmong tribesmen -- though the group operated, in fact, under the supervision of Theodore Shackley and Thomas Clines.

From 1966 to 1968, the commander of the Special Operations Group, which supervised the political assassination program in Laos, Cambodia, and Thailand, was Defendant General John K. Singlaub.

Serving under Singlaub in Laos for a period at the end of 1968 was a young 2nd Lt. by the name of Oliver North.

The Deputy Air Wing Commander for the Special Operations Group was then Air Force Lt. Col. Richard Secord. His superior was then Col. Heinie Aderholt.

One of the members of the Army Special Forces units in the Group was one Dwight Owen -- the older brother of Defendant Robert Owen.

Between 1966 and 1971, this Special Operations Group based in Laos was, in fact, under the supervision of Theodore Shackley and Thomas Clines. During the period from 1966 to 1975, this Special Operations Group in Laos, through the secret Hmong tribesmen unit funded by a portion of Van Pao's opium income, secretly assassinated over 100,000 non-combatant village mayors, book-keepers, clerks and other civilian bureaucrats in the countries of Laos, Cambodia and Thailand.

In 1966, Theodore Shackley became CIA Chief of Station in Laos when former Station Chief Gordon Jorgenson was made Chief of Station in Vietnam. Thomas Clines continued to be a Deputy to Shackley in Laos. In early 1968, Shackley became Chief of Station in Saigon.

In 1968, Theodore Shackley's former associate in the JM/Wave program in Miami, Mafia Lieutenant Santo Trafficante, flew from Tampa, Florida, to Southeast Asia where he met at a hotel in Saigon with Shackley's Laotian associate Van Pao. In this meeting, Santo Trafficante agreed to become a partner with Van Pao in the importation of China White heroin into the United States. By 1969, Santo Trafficante had become the #1 importer and distributor of China White heroin in America. Van Pao's profits increased accordingly -- as did his financial contribution to the secret Hmong tribesmen assassination

and "unconventional warfare" project supervised by Theodore Shackley and Thomas Clines in Laos, Cambodia and Thailand.

In early 1972, Theodore Shackley and Thomas Clines were transferred from Saigon to the United States, where Theodore Shackley became the Chief of the CIA's Western Hemisphere operations. Thomas Clines became his Deputy. This division of the CIA directs the operations of the CIA in Central and Latin America.

From this post, Theodore Shackley and Thomas Clines directed the operation known as "Track II" in Chile which directed the political assassination of Chilean socialist President Salvador Allende and his Chief of Staff in Chile and the military overthrow of the democratically elected government of Chile in September of 1973.

Shortly before the successful overthrow of the socialist Chilean government in September of 1973, Theodore Shackley and Thomas Clines were transferred to Langley, Virginia; Shackley headed the East Asia Division with Clines as his Deputy.

From this post at Langley, Theodore Shackley and Thomas Clines directed the Phoenix Project in Vietnam in 1974 and 1975 which carried out the secret mission of assassinating members of the economic and political bureaucracy inside Vietnam to cripple the ability of that nation to function after the total US withdrawal from Vietnam. This Phoenix Project, during its history, carried out the political assassination, in Vietnam, of some 60,000 village mayors, treasurers, school teachers and other non-Viet Cong administrators.

Theodore Shackley and Thomas Clines financed a

highly intensified phase of the Phoenix Project, in 1974 and 1975, by causing an intense flow of Van Pao opium money to be secretly brought into Vietnam for this purpose.

This Van Pao opium money was administered for Theodore Shackley and Thomas Clines by a US Navy official based in Saigon's US office of Naval Operations by the name of Richard Armitage.

Armitage functioned as the "bursar" for their Van Pao opium funds into the Vietnam Phoenix Project from 1973 to the fall of Vietnam in April of 1975.

The Birth of the Secret Team

However, because Theodore Shackley, Thomas Clines and Richard Armitage knew that their secret anti-communist extermination program was going to be shut down in Vietnam, Laos, Cambodia, and Thailand in the very near future, they, in 1973, began a highly secret non-CIA authorized program setting up their own private anti-communist assassination and unconventional warfare program -- to operate after the end of the Vietnam campaign.

Thus, from late 1973 until April of 1975, Theodore Shackley, Thomas Clines and Richard Armitage disbursed, from the secret, Laotian-based, Van Pao opium fund, vastly more money than was required to finance even the highly intensified Phoenix Project in Vietnam. The umoney in excess of that used in Vietnam was secretly smuggled out of
Vietnam in large suitcases, by Richard Secord and Thomas Clines -- and carried into Australia, where it was deposited

in a secret, personal bank account (privately accessible to Theodore Shackley, Thomas Clines and Richard Secord).

During this same period of time between 1973 and 1975, Theodore Shackley and Thomas Clines caused thousands of tons of U.S. weapons, ammunition, and explosives to be secretly taken from Vietnam and stored at a secret "cache" hidden inside Thailand. The Van Pao monies in this secret Australian account and this large cache of stolen US weapons hidden deep inside Thailand were to be used by Theodore Shackley, Thomas Clines, Richard Secord, Richard Armitage and the right-wing covert operations operatives they could persuade to join their "off-lines", private "secret team" after the conclusion of the Vietnam campaign.

The "liaison officer" to Shackley and Clines and the Phoenix Project in Vietnam, during this 1973 to 1975 period, from the "40 Committee" in the Nixon White House was one Eric Von Marbod -- an Assistant Secretary of State for Far Eastern Affairs. Von Marbod shared his information about the Phoenix Project directly with his supervisor Henry Kissinger.

Saigon fell to the Vietnamese in April of 1975. The Vietnam War was over.

Post-Vietnam: Drugs, Arms Scams and Terror Continue

Immediately upon the conclusion of the evacuation of U.S. personnel form Vietnam, Richard Armitage was dispatched, by Theodore Shackley and Thomas Clines, from Vietnam to Tehran, Iran.

In Iran, Armitage (the "bursar"for the Van Pao opium money for Shackley and Clines' planned "Secret Team" covert operations program), between May and August of 1975, set up a secret "financial conduit" inside Iran, into which secret Van Pao drug funds could be deposited from Southeast Asia. The purpose of this conduit was to serve as the vehicle for secret funding, by Shackley's "Secret Team,"
of a private, non-CIA authorized "Black" operations inside Iran -- disposed to seek out, identify, and assassinate socialist and communist sympathizers -- who were viewed by Shackley and his "Secret Team" members to be "potential terrorists" against the Shah of Iran's government in Iran.

In late 1975 and early 1976, Theodore Shackley and Thomas Clines retained Edwin Wilson to travel to Tehran, Iran to head up the "Secret Team" covert "anti-terrorist" assassination program in Iran.

This was not a U.S. government-authorized operation. This was a private operation supervised, directed and participated in by Shackley, Clines, Secord and Armitage in their purely private capacities.

At the end of 1975, Richard Armitage took the post of a "Special Consultant" to the U.S. Department of Defense regarding American military personnel Missing In Action (MIAs) in Southeast Asia.

In this capacity, Armitage was posted in the U.S. Embassy in Bangkok, Thailand.

There Armitage had top responsibility for locating and retrieving American MIA's in Southeast Asia. He worked at the Embassy with an associate, one Jerry O. Daniels.

From 1975 to 1977, Armitage held this post in Thailand. However, he did not perform the duties of this office. Instead, Armitage continued to function as the "bursar" for Theodore Shackley's "Secret Team," seeing to it that secret Van Pao opium funds were conducted from Laos, through Armitage in Thailand to both Tehran and the secret Shackley bank account in Australia at the Nugen-Hand Bank. The monies conducted by Armitage to Tehran were to fund Edwin Wilson's secret anti-terrorist "seek and destroy" operation on behalf of Theodore Shackley.

Armitage also devoted a portion of his time, between 1975 and 1977, in Bangkok, facilitating the escape from Laos, Cambodia and Thailand and the re-location elsewhere in the world, of numbers of the secret Hmong tribesmen group which had carried out the covert political assassination program for Theodore Shackley in Southeast Asia between 1966 and 1975. Assisting Richard Armitage in this operation was Jerry O. Daniels. Indeed, Jerry O. Daniels was a "bag-man" for Richard Armitage, assisting Armitage by physically transporting out of Thailand millions of dollars of Van Pao's secret opium money -- to finance the re-location of Theodore Shackley's Hmong tribesmen and to supply funds to Theodore Shackley's "Secret Team" operations.

At the U.S. Embassy in Bangkok, Richard Armitage also supervised the removal of arms, ammunition and explosives from the secret Shackley-Clines cache of munitions hidden inside Thailand between 1973 and 1975 -- for use by Shackley's "Secret Team." Assisting Armitage in this latter operations was one Daniel Arnold, the CIA Chief of Station in Thailand -- who joined Shackley's Secret Team -- in his purely private capacity.

The U.S. Ambassador to Thailand, one Morton Abramowitz, to know of Armitage's involvement in the secret handling of Van Pao opium funds and caused to be initiated an internal State Department heroin smuggling investigations directed against Richard Armitage.

Armitage was the target of Embassy personnel complaints to the effect that he was utterly failing to perform his duties on behalf of American MIAs, and he reluctantly resigned as the D.O.D. Special Consultant on MIA's at the end of 1977.

From 1977 until 1979, Armitage remained in Bangkok opening and operating a business named The Far East Trading Company. This company had offices only in Bangkok and in Washington, D.C. This company was, in fact, from 1977 to 1979, merely a "front" for Armitage's secret operations conducting Van Pao opium money out of Southeast Asia to Tehran and the Nugen-Hand Bank in Australia to fund the ultra right- wing, private anti-communist "anti-terrorist" assassination program and "unconventional warfare" operation of Theodore Shackley's and Thomas Cline's "Secret Team." During this period, between 1975 and 1979, in Bangkok, Richard Armitage lived in the home of Heinie Aderholt -- the former Air Wing Commander of Shackley's "Special Operations Group" in Laos -- who, between 1966 and 1968, had served as the immediate superior to Richard Secord, the Deputy Air Wing Commander of MACV-SOG.

Secord, in 1975, was transferred from Vietnam to Tehran, Iran.

Early "Iran Arms Deal" Profit-Skimming

In 1976, Richard Secord moved to Tehran, Iran and became the Deputy Assistant Secretary of Defense in Iran, in charge of the Middle Eastern Division of the Defense Security Assistance Administration. In this capacity, Secord functioned as the chief operations officer for the U.S. Defense Department in the Middle East in charge of foreign military sales of U.S. aircraft, weapons and military equipment to Middle Eastern nations allied to the U.S.. Secord's immediate superior was Eric Von Marbod -- the former 40 Committee liaison officer to Theodore Shackley's Phoenix program in Vietnam from 1973 to 1975.

From 1976 to 1979, in Iran, Richard Secord supervised the sale of U.S. military aircraft and weapons to Middle Eastern Nations.

However, Richard Secord did not authorize direct nation-to-nation sales of such equipment directly from the U.S. government to said Middle Eastern governments. Instead, Richard Secord conducted such sales through a "middle-man", one Albert Hakim.

By the use of middle-man Albert Hakim, Deputy Assistant Secretary of Defense Richard Secord purchased U.S. military aircraft and weapons from the U.S. government at the low "manufacturer's cost" -- but sold these U.S. aircraft and weapons to the client Middle Eastern nations at the much higher "replacement cost." Secord then caused to be paid to the U.S. government, out of the actual sale price obtained, only the lower amount equal to the lower manufacturer's cost. The difference, was secreted from the U.S. government. Secord and Albert Hakim secretly transferred these millions of dollars into Shackley's "Secret Team" operations inside Iran -- and into Shackley's secret Nugen-Hand bank

account in Australia. Thus, by 1976, Defendant Albert Hakim had become a partner with Thomas Clines, Richard Secord and Richard Armitage in Theodore Shackley's "Secret Team."

Between 1976 and 1979, Shackley, Clines, Secord, Hakim, Wilson, and Armitage set up several corporations and subsidiaries around the world through which to conceal the operations of the Secret Team. Many of these corporations were set up in Switzerland. Some of these were: (1) Lake Resources, Inc.; (2) The Stanford Technology Trading Group, Inc.; and (3) Companie de Services Fiduciares. Other companies were set up in Central America, such as: (4) CSF, Investments, Ltd. and (5) Udall Research Corporation. Some were set up inside the United States by Edwin Wilson. Some of these were: (6) Orca Supply Company in Florida and (7) Consultants International in Washington, D.C.

Through these corporations, members of Theodore Shackley's "Secret Team" laundered hundreds of millions of dollars of secret Van Pao opium money and pilfered Foreign Military Sales proceeds between 1976 and 1979.

In January of 1979, Theodore Shackley, Thomas Clines, Richard Secord and Albert Hakim made Edwin Wilson a full partner in their "Secret Team" gunrunning board, establishing the corporation named the Egyptian-American Transport and Services Corporation.

The Contra Connection: The Secret Team Bargains with Somoza

In the Spring of 1978, Shackley, Clines, Secord and Hakim directed Edwin Wilson to travel to Nicaragua to

make available to Nicaraguan dictator Anastasio Somoza, the private assassination services of Shackley's "Secret Team" -- the objective of which was to carry out the location of and the political assassination of the top leadership of the Sandinista revolutionary movement. This contract was tendered, and Wilson offered the assassination services of Shackley's "Secret Team" to Somoza, in the Spring of 1978, for the sum of $650,000 per year. This offer included the services of five (5) "counter- subversion specialists," at the price of $80,000 per year each and an annual expense account of $250,000 for the operation. One the five "specialists" was to be Defendant Rafael "Chi Chi" Quintero. The others were to be members of the 1960 Richard Nixon-Santo Trafficante "Shooter Team" assembled for Operation 40 (members of which were used as "operatives" for Shackley's political assassination operations form 1961 to the present).

Somoza felt that the price tag was too high for this project -- so he continued to negotiate for a lower price.

Persons who know of this 1978 approach to Somoza by Wilson on behalf of Shackley, Clines, Secord and Hakim are one Douglas Schlachter, Source #72, (presently in the Federal Witness Protection Program), one Christine Simmons, Source #73, and former United States Congressman Charles Wilson, Source #74.

Again, in the Spring of 1979, Theodore Shackley, Thomas Clines, Albert Hakim and Richard Secord sent Edwin Wilson to arrange a contract relationship between the "Secret Team" and Nicaraguan dictator Anastasio Somoza.

This time, the contract offer was to supply military equipment, ammunition and explosives to Somoza -- since

Somoza's dictatorial government had been cut off from any supply of military equipment from the U.S. by President Jimmy Carter's invocation of the Harkin Amendment in early 1979.

While Edwin Wilson's trip to Somoza in the Spring of 1979 did not result in the establishment of this contract, the trip of Rafael "Chi Chi" Quintero, later, did. Thus, by early 1979, Theodore Shackley, Thomas Clines, Albert Hakim and Richard Secord (all partners together in this Egyptian-American Transport and Service Company) had a formal contractual relationship with Nicaraguan dictator Anastasio Somoza pursuant to which this "Secret Team" supplied weapons, ammunition, aircraft and explosives to Somoza's Nicaraguan government -- despite the formal order of the United States President Jimmy Carter that no military equipment of any kind was to be provided to Somoza's Nicaraguan government.

Neither President Carter nor his Director of Central Intelligence, Stansfield Turner, knew or approved of the conduct of Theodore Shackley and his partners who supervised the Secret Team -- because Shackley and Clines had been ordered by Stansfield Turner to resign from the CIA in late 1978 or early 1979 -- when Turner learned that Shackley and Clines were business partners with Edwin Wilson, who was going to be publicly indicted (based on the disclosures of Kevin Mulcahey) for unlawfully supplying military explosives and weapons to Libya.

From March to July of 1979, Shackley's "Secret Team" supplied military equipment to Somoza in his capacity as the Dictator of Nicaragua. The man who met regularly with Somoza's representative to arrange these weapons shipments was Rafael "Chi Chi" Quintero.

The CIA Takes the Ball

When Somoza fled from Nicaragua on July 17, 1979, he travelled to an island in the Bahamas named North Cay. There he met with Rafael "Chi Chi" Quintero and other representatives of Theodore Shackley and his Secret Team associates.

In their July, 1979 meetings on North Cay, representatives of Theodore Shackley, Thomas Clines, Richard Secord and Albert Hakim entered into a contract to supply aircraft, weapons, ammunition, and military explosive to Somoza and his La Guardia Generals who had fled Nicaragua with him, to enable them, now as "Contras", to plan and prosecute -- against the U.S. government-recognized Sandinista government of Nicaragua -- a secret covert Contra war virtually identical to the one which Theodore Shackley and Thomas Clines had supervised against the socialist revolutionary government of Cuba from 1961 to 1965.

The man who met regularly with the Contra military field commanders, to advise them as to what weapons and equipment they needed -- and to see to it that this equipment was supplied to the Contras from 1979, through 1980, into 1981, was Rafael "Chi Chi" Quintero. He conducted his weapons supply activities through the Miami-based company named Orca Supply Company, a company set up by Edwin Wilson.

These secret supply operation to the Contras by Shackley's "Secret Team" continued until June of 1981 -- when the United States CIA officially (though covertly) took over this operation and assigned Vincent M.

Cannistraro to take the place of Rafael "Chi Chi" Quintero as the "Supply Officer" for the Contra operation.

North Turns to the Secret Team When Congress Bans Aid

When the United States Congress was drafting the Boland Amendment in late 1983 to order the CIA and the White House to cease all United States Executive Department aid to the Contras, Lt. Colonel Oliver North contacted Theodore Shackley, Thomas Clines, Albert Hakim and Richard Secord and had the "Secret Team" re-activate its military supply of the Contras' operations -- which also included the John Hull Contra operation in Costa Rica on the "Southern Front" against Nicaragua. Rafael Quintero, again, became the "Supply Officer" for the Honduran and Costa Rican Contra operations.

As of March of 1984, the Defendants' "Secret Team" was, once again, back in charge of the secret supplying of aircraft, weapons, ammunition and military explosives to the Contra forces in Honduras and through John Hull's ranch in Costa Rica.

It was between March of 1984 and May of 1984 that Defendants Shackley, Clines, Secord, Hakim, Quintero, et al. supplied to John Hull -- along with Defendants Posey, Martin, McCoy, Delamico et al. -- the C-4 military explosives used by the right-wing Libyan terrorist Amac Galil to bomb the May 30, 1984 La Penca press conference of Eden Pastora.

It was also this same group of men who supplied the C-4 explosives that were to be used in the terrorists' bombing attack against the United States Embassy in Costa

Rica in July of 1985, described in the Plaintiffs' Amended Complaint.

White House Uses Secret Team Again for Iranian Arms Deal Profits go to the Contra Operations

Also, when Ronald Reagan, Edwin Meese, William Casey, and Robert McFarlane, John Poindexter and Oliver North decided, in 1985 and 1986, to undertake the secret sale of arms to Iran, it was, once again, this "Secret Team" of Theodore Shackley, Thomas Clines, Albert Hakim and Richard Secord to whom they went to carry out this "black" mission. Plaintiff's sources for this information are Sources #49 and #50. They are the sources for all the information in paragraph 71.

This "Secret Team" employed its tried and tested procedure of purchasing the military equipment from the U.S. Pentagon at "manufacturer's cost" and selling the equipment to Iran at "replacement cost" -- and conducted the "excess" profit earned in the sale, through Lake Resources, Inc., Companie de Services Fiduciares and in to its Grand Cayman account in the name of CSF Investments, Ltd. --where the "Secret Team" kept on deposit the funds which it secretly used to finance its Contra war against the socialist government of Nicaragua.

Secret Team member Richard Secord purchased short take-off and landing (STOL) airplanes for the Contra forces in Honduras and Costa Rica -- which planes were used to ferry weapons and explosives onto John Hull's farm from Ilopango Air Force Base in El Salvador.

Secord purchased there four STOL aircraft from MAUL, Inc., paying for said aircraft with two checks -- one drawn on the account of CSF Investments, Ltd. and

the other drawn on the account of Udall Research Corporation.

Rafael "Chi Chi" Quintero personally participated in the supervision of the construction of the dirt landing strips inside Costa Rica which were used for the smuggling into Costa Rica of weapons, ammunition, and military explosives -- the construction of which secret landing strips were financed by checks drawn on the account of Udall Research Corporation.

Defendants Albert Hakim, Richard Secord and Thomas Clines are all associated with the company of Stanford Technology, Inc. and Stanford Technology Trading Group, Inc.. The registered agent of the office of Stanford Technology Trading Group, Inc. located in Switzerland is also the registered President of CSF Investments, Ltd. in the Grand Cayman Islands and Defendant Hakim has paid an official court settlement of a private lawsuit with a check drawn on the account of CSF Investments, Ltd.

Telephone calls placed from the secret "safe house" in El Salvador, where Eugene Hasenfus and the other crew members who flew arms and munitions to the Contra forces in Central America lived, went to the offices of Secord's, Clines' and Hakim's company Stanford Technology, Inc..
Plaintiffs' Counsel has a direct eyewitness, Source #75, who can identify Felix Rodriguez as the man who, along with Luis Posada Carriles, supervised the unloading of weapons and ammunition flown in from Florida to Ilopango Air Force Base in El Salvador by Defendant Thomas Posey and who
then trans-shipped said equipment to Defendant John Hull's ranch in Costa Rica.

And Plaintiffs' Counsel has a source, Source #76, who can testify that this same Felix Rodriguez is, in fact, a long-time employee of Defendant Theodore Shackley -- indeed, that this Felix Rodriguez has, for many years, worked as an employee of Defendant Shackley in Theodore Shackley's private "Secret Team" weapons supply and assassination program.

Conclusion

Plaintiffs' Counsel represents to the Court that he is in contact with other sources who possess further, first-hand, evidence proving the truthfulness of the civil and criminal charges made against the 29 Defendants in the Plaintiffs' Amended Complaint -- and that these sources include Eden Pastora himself, Source #77, high-ranking officials in the Costa Rican government and elsewhere, Sources #78 and #79, -- which the Court's short 20 day period allowed for the Plaintiffs' preparation of their Opposition to the Defendants' Motion to Dismiss did not allow Plaintiffs' Counsel adequate time to contact.

Plaintiffs' Counsel also represents to the Court that Plaintiffs would easily be able to provide numerous additional sources to prove the truthfulness of the facts set forth in this Attorney's Affidavit, if the Court were to afford the Plaintiffs the standard opportunity for civil discovery.

Also, Plaintiffs' Counsel asks that the Court take Judicial Notice of the fact that numerous reports have been published in The New York Times, The Washington Post, The San Francisco Examiner, and many other national newspapers setting forth details of the conduct of some of the Defendants in this civil action which

corroborate their participation in the covert criminal enterprise to violate the United States Neutrality Act by unlawfully waging war against the nation of Nicaragua -- which is the "enterprise" reported by the Plaintiffs to this Court in May of 1986. While such reports are certainly not dispositive of the issue of the Defendants' participation in the criminal enterprise described in the Plaintiffs' Amended Complaint, the fact that the Plaintiffs and the Plaintiffs' Counsel have been the source of information to the Court, so much of which has now been publicly revealed to the Court by the national media and by Congress to have been entirely accurate, most certainly should dispel any remaining doubts that the Court may have had, at one time, that Defendants' Attorney Ted Kline was incorrect when he publicly asserted to the media that "The Plaintiffs' case is just a Clown Act". This case is no "Clown Act". It is a serious endeavor to bring the legal process of the Judicial Branch of our Federal government to expose, to evidence, and to prove the factual assertions made against the Defendants in this case by the Plaintiffs.

Plaintiffs also ask the Court to take Judicial Notice of the fact that Defendants Richard Secord and Robert Owen appeared before United States Congressional committees on December 9th and 10th of this year and asserted, under oath, that their being required to testify about their possible participation in a criminal enterprise to covertly provide funds and weapons to the Central American Contra forces would result in testimony which would tend to incriminate them or provide direct evidence of their guilt of some of the federal crimes with which the Plaintiffs' Counsel publicly charged them before this Court on May of 1986.

Surely this conduct of only the first of the Defendants named in this federal civil suit to be placed under oath

and asked about their participation in the criminal "enterprise" alleged in this Complaint is probative of the criminal guilt of the Defendants of some of the crimes charged in this Complaint.

Plaintiffs and Plaintiffs' Counsel, The Christic Institute, possess evidence constituting "probable cause" that each of the Defendants named in this Complaint are guilty of the conduct charged.

If further detailed evidence is required by the Court to allow the Plaintiffs to begin the standard process of discovery in this case, the failure to place it in this Affidavit is the function of the short time allowed by the Court for the preparation of this filing -- it is not because the Plaintiffs lack such evidence.

Daniel P. Sheehan

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Nos. 91-617, 91-618, 91-619

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

TONY AVIRGAN, *et al.*,
Petitioners,

v.

JOHN HULL, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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JOINT CONSOLIDATED BRIEF OF RESPONDENTS CALERO, CLINES, DELAMICO, GONZALEZ, HAKIM, HULL, MARTIN, McCOY, NUNEZ, OWEN, QUINTERO, SECORD, SHACKLEY, AND SINGLAUB IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the imposition of Rule 11 sanctions on Mr. Sheehan violated his Fifth and Sixth Amendment rights, where the district court found that the sanctioned attorney filed a complaint with no prospect of being able to prove his claims and made false representations to the court which were the basis on which two years of pretrial discovery proceeded.

2. Whether the Fifth Amendment's Due Process Clause required the district court to conduct an evidentiary hearing before imposing sanctions on Mr. Sheehan pursuant to the "bad-faith" exception of the American Rule, where the sanctions were based on the sanctioned attorney's own conflicting representations to the court and where, prior to imposition of the sanctions, the sanctioned attorney had received notice of the basis for the sanctions, submitted a written response of 40 pages, and never requested a hearing.

3. Whether the Fifth Amendment's Due Process Clause required the district court, when imposing sanctions on Mr. Sheehan pursuant to 28 U.S.C. § 1927 for unreasonably and vexatiously multiplying the proceedings, to make a specific finding of the proportion of the defendants' costs and attorneys' fees attributable to specific conduct, where the court found that the sanctioned attorney "must have known prior to suing that [he] had no competent evidence to substantiate the theories alleged" in the complaint and where his false representations to the court were the basis on which two years of pretrial discovery proceeded.

4. Whether there is a conflict between the district court's summary judgment and sanctions orders so that the entry of sanctions against Mr. Sheehan pursuant to Rule 11, 28 U.S.C. § 1927, and the "bad-faith" exception to the American Rule constitutes an abuse of discretion.

5. Whether the imposition of Rule 11 sanctions on the Christic Institute conflicts with this Court's decision in *Pavelic & LeFlore v. Marvel Entertainment Group* where the Christic Institute was a real party in interest in the litigation.

6. Whether the Christic Institute may be sanctioned under 28 U.S.C. § 1927.

7. Whether the Christic Institute may be sanctioned pursuant to the "bad-faith" exception to the American Rule.

8. Whether the Fifth Amendment's Due Process Clause required the district court to conduct an evidentiary hearing before imposing "bad-faith" sanctions on the Christic Institute where, prior to imposition of the sanctions, the sanctioned party had received notice of the basis for the sanctions, submitted a written response of 40 pages, and never requested a hearing.

9. Whether the district court abused its discretion when it imposed, pursuant to its inherent powers, "bad-faith" sanctions against plaintiffs Avirgan and Honey who "had every reason to know they stood no chance of proving" that the defendants caused their injuries and where they were "willful participants in [their attorney's] litigation strategy" and were paid for their participation in the litigation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

Nos. 91-617, 91-618, 91-619

TONY AVIRGAN, *et al.*,
Petitioners,

v.

JOHN HULL, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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JOINT CONSOLIDATED BRIEF OF RESPONDENTS CALERO, CLINES, DELAMICO, GONZALEZ, HAKIM, HULL, MARTIN, McCOY, NUNEZ, OWEN, QUINTERO, SECORD, SHACKLEY, AND SINGLAUB IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

RESPONSE TO PETITIONERS' STATEMENTS OF THE CASE

Respondents will not respond here in any length to the statements of the case contained in the petitions for writs of certiorari. We note that they are argumentative, inaccurate, and, for the most part, relevant only to the award of summary judgment—which is not

the subject of the certiorari petitions—and not to the award of sanctions. Additionally, petitioners' version of the facts was rejected by the Eleventh Circuit, which unanimously found that ample time and scope was granted to petitioners to obtain discovery in support of their allegations, and that the "evidence" produced by petitioners was insufficient to satisfy their burden in defeating respondents' properly supported summary judgment motions.

With respect to the facts material to the sanctions awards, petitioners fail to mention many of the key facts relied upon by the district court. In particular, petitioners fail to discuss the district court's findings regarding the false and misleading nature of the Sheehan Affidavit (R4.141), which contained a detailed exposition of the "knowledge" of petitioners at the time they filed their complaint (2SR2.1300, p. 7 of Sanctions Affidavit), and which was the basis for the two years of litigation that preceded the summary judgment awards. *Avirgan v. Hull*, 705 F. Supp. 1544, 1545 (S.D. Fla. 1989) (J. App. I, 32-A - 33-A). The Sheehan Affidavit, submitted in December 1987 to defeat a motion to dismiss, outlined the purported testimony of 79 alleged witnesses in support of the allegations of the Second Amended Complaint. Petitioners vigorously resisted disclosing the identity of those alleged witnesses, citing concerns for their security. When disclosure was finally completed, after a twelve-month procedural battle, it was learned that 11 of the 79 sources simply did not exist, 17 were dead or of unknown identity to petitioners, two were later admitted by petitioners to have provided no information set forth in the affidavit, and 10 denied having given petitioners the information attributed to them in the Sheehan Affidavit.[1] As the district court found,

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[1] (R4.141; R14.529; R15.556; R16.595 Ex. C; R17.646; R40E.1193.706, 712; R16.595 Ex. D-1, ¶ 10, D-7, D-11; R42E.1197.295-305; R18.656 Exs. 2, 4; R38.1218 Ex. F; R38.1218 Ex. G.)

> [t]he names and identities of approximately twenty of the seventy-nine witnesses were totally unknown to Mr. Sheehan or plaintiffs. Several of the disclosed witnesses later stated under oath that they did not know Mr. Sheehan, had never spoken to him, or flatly denied the statements he had attributed to them in his affidavit. The remaining witnesses did not furnish any statement that would be admissible.

705 F. Supp. at 1545.

The petitioners' statements of facts suffer not only from omissions of fact, but misstatements of the record. For example, Petitioner Sheehan refers to an indictment by the Costa Rican government as part of his "compelling pre-filing evidence." (Sheehan Pet. 7.) However, the alleged Costa Rican "indictment" was *not* part of the "pre-filing evidence," is not even part of the record in this case, and was rejected for filing by the Eleventh Circuit when petitioners sought to supplement the record with it. Likewise, nothing in the record supports Petitioner Sheehan's representation that he informed the district court of 49 exhibits and 58 witnesses on causation in the plaintiffs' pretrial stipulation. (Sheehan Pet. 11.) That document merely listed the names of over 2000 witnesses and thousands of exhibits with no indication of their relevance. (R.28.972.)

Other misstatements of fact and incomplete or misleading statements of the record in petitioners' briefs are discussed below in the contexts of the various arguments to which they are relevant.

SUMMARY OF ARGUMENT

The three petitions to which this joint consolidated opposition responds arise from unusual circumstances where a district court, having determined that the petitioners had concocted a lawsuit and kept it alive by direct misrepresentations to that court, imposed substantial sanctions because of the great harm and expense caused by the litigation. Those sanctions were unanimously affirmed by a panel of the Eleventh Circuit, and no judge of that court requested that the court be polled on the suggestion for rehearing *en banc*.

Petitioners now claim constitutional violations, a conflict among the circuits, and a conflict with recent opinions of this Court to justify the grant of certiorari. None exist. The sanctions were well supported by the deceptive conduct of the petitioners below and were entered after a more than adequate opportunity for petitioners to be heard. No conflict exists between the two circuit court decisions cited by petitioner Christic Institute. No conflict exists with decisions of this Court. The specific and unique facts of this case fully justified the sanctioning of the Christic Institute "law firm," its lead counsel Daniel Sheehan, and the plaintiffs Avirgan and Honey.

Reduced to their essence, the petitions ask this Court to engage in a detailed factual analysis and find an abuse of discretion by the district judge. Such a review would be directly contrary to this Court's recent holding that deference should be paid to the findings of the district judge who is familiar with the issues and the litigants and in the best position to determine whether and what sanctions should be imposed. Moreover, because of the peculiar nature of the facts giving rise to these sanctions, review by this Court would not establish a rule of law with significance beyond the parties to this litigation.

No factual, constitutional, or policy reason exists to grant the petitions for writs of certiorari to the Eleventh Circuit. The expense and disruption inflicted by these petitioners on the respondents should be brought to an end.

REASONS FOR DENYING THE WRITS

I. THE IMPOSITION OF RULE 11 SANCTIONS ON MR. SHEEHAN FOR FILING A GROUNDLESS SUIT AND FOR HIS MISREPRESENTATIONS IN SIGNED COURT PAPERS WAS WELL WITHIN THE DISTRICT COURT'S DISCRETION

Petitioner Sheehan argues in Point I of his petition that the district court violated his Fifth and Sixth Amendment rights not to be deprived of his property without due process of law when it imposed on him over $1,000,000 in Rule 11 sanctions. His tortured argument, even in its constitutional dressing,[2] asks only that this Court make a third review of the lengthy trial court proceedings and reverse the holdings of the district court and court of appeals that neither the complaint nor the Sheehan Affidavit was well grounded in fact at the time Mr. Sheehan signed them. Furthermore, Petitioner Sheehan misstates the basis on which the district court imposed Rule 11 sanctions, misapplies the *Celotex* and *Liberty Lobby* opinions, and misrepresents the facts in this case.

A. The Rule 11 Sanctions Imposed On Mr. Sheehan Were Based On Not Only Lack of Evidence But Also Misrepresentations To The District Court In And Involving His Affidavit

The district court imposed Rule 11 sanctions on Mr. Sheehan not only because he had "no evidence" to support his claim, as he suggests (Sheehan Pet. 20), but also because of his misrepresentations to the district court in and involving his affidavit. The district court found (1) that the Sheehan Affidavit outlined the purported testimony of 79 witnesses identified only by number, (2) that Mr. Sheehan had refused to disclose the identity of

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[2] Petitioner Sheehan claims violations of the Fifth and Sixth Amendments. However, the only arguable application of the Fifth Amendment is treated elsewhere in his petition—in his claims of denial of due process. The Sixth Amendment has never been held to have applicability to civil proceedings imposing Ruling 11 sanctions such as are involved here.

most of those witnesses for almost a year, citing concerns regarding the "security" of the witnesses, (3) that the reason for his refusal became apparent when final disclosure revealed that many of the so-called witnesses were totally unknown to Mr. Sheehan, had never spoken to him, or denied the information attributed to them, (4) that the Sheehan Affidavit had been the basis on which plaintiffs had been permitted to conduct two years of discovery, and (5) that Mr. Sheehan's refusal to disclose the identities of the witnesses prevented respondents from deposing the witnesses and delayed orderly discovery by defendants for many months. 705 F. Supp. at 1545 (J. App. I, 31-A). Thus, Petitioner Sheehan is clearly wrong in his contention that the Rule 11 sanctions were based only on the summary judgment findings that he had "no evidence" to support his claim. Indeed, elsewhere in his petition he recognizes this fact when he states: "petitioner's purported 'bad faith' was the basis of the entire sanction." (Sheehan Pet. 25.)

Based on this evidence of misrepresentation by Mr. Sheehan, the district court implicitly concluded, and the Eleventh Circuit agreed, that "Sheehan could not have reasonably believed at the time of the filing of the complaint and the signing of the affidavit that the complaint was well-grounded in fact," and that he therefore violated Rule 11. *Avirgan v. Hull*, 932 F.2d 1572, 1582 (11th Cir. 1991) (J. App. I, 21-A). For this Court now to sift through the voluminous record below, as requested by Mr. Sheehan, would eviscerate this Court's holding in *Cooter & Gell v. Hartmarx Corp.*, 110 S. Ct. 2447, 2459 (1990), which mandates deference to the district court on factual and legal findings in Rule 11 matters.[3]

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[3] *Cooter & Gell* held that a district court's imposition of Rule 11 sanctions is reviewable only for abuse of discretion. "Familiar with the issues and the litigants, the district court is better situated than the court of appeals to marshal the pertinent facts and apply

B. The District Court's Summary Judgment Order Is Not An Issue Before This Court And, In Any Case, Is Correct

Even though Mr. Sheehan devotes five pages of his petition to an analysis of whether summary judgment was properly granted, he has not asked this Court to grant certiorari on this issue.[4] His sole reason for analyzing the district court's summary judgment findings is to attempt to show that they were procedurally defective under this Court's decision in *Celotex* and *Liberty Lobby* and thus that the Rule 11 sanctions, which he claims were based on the summary judgment findings, were also defective. As shown above, the Rule 11 sanctions were based not only on the summary judgment findings of "no evidence" but also on Mr. Sheehan's misrepresentations to the district court throughout the course of the district court proceedings. Thus, Mr. Sheehan's summary judgment analysis is irrelevant. It is also wrong.

The district court did not grant summary judgment on mere conclusory assertions that petitioners had no evidence, as Mr. Sheehan contends. (Sheehan Pet. 20.) Respondents amply demonstrated that petitioners had no admissible evidence showing that respondents had caused the La Penca bombing—a key element of plaintiffs' RICO claim.[5] For example, Respondent Shackley's third mo-

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the fact-dependent legal standard mandated by Rule 11." 110 S. Ct. at 2459.

[4] None of the other petitioners seek review of that part of the Eleventh Circuit's decision affirming the award of summary judgment. Accordingly, the summary judgment award is final and not subject to further review.

[5] Petitioner Sheehan does not contest that plaintiffs were required to prove, as an essential element of their RICO claim, that their injuries were proximately caused by the alleged Neutrality Act enterprise. 18 U.S.C. § 1964(c); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985).

tion for summary judgment was supported by the following documents:

1. A statement of material facts not in dispute, which was "deemed admitted" pursuant to Southern District of Florida Local Rule 10J because plaintiffs failed to file a statement in which those facts were controverted. (R16.595.)

2. Plaintiffs' response to Mr. Shackley's second production request in which plaintiffs stated that they had no documents relating to their allegations against Mr. Shackley. (R16.595, Ex. B.)

3. Plaintiffs' answers to Mr. Shackley's interrogatories, which likewise showed that plaintiffs had no evidence linking Mr. Shackley to the La Penca bombing. (R16.595, Ex. C.)

4. Eighteen affidavits from individuals whom plaintiffs had described as having knowledge to support the allegations against Mr. Shackley or individuals in a position to know of any involvement by Mr. Shackley in Contra-related activities.[6] The affidavits contained explicit denials of knowledge of Mr. Shackley's involvement in the activities that plaintiffs alleged. (R16.595, Ex. D.)

Respondent Owen's summary judgment papers provide another example of respondents' extensive showing that there was no genuine issue of material fact on the issue of causation. Mr. Owen submitted an affidavit in which he denied each allegation made in the complaint against him. In addition, his summary judgment papers exam-

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[6] These individuals were described in plaintiffs' interrogatories as "believed to have firsthand knowledge" that Mr. Shackley supplied arms to the Contras or received the proceeds of illegal sales (R16.595, Ex. C, Interr. 2), or to "have knowledge of facts" supporting the allegation that Mr. Shackley joined the "enterprise" in 1984 (*Id.*, Interr. 3), or were listed as primary sources in the Sheehan Affidavit (R4.141).

ined the evidence in the Sheehan Declaration of Counsel (R18.661), which plaintiffs admitted was the only evidence they had against him. That examination showed that the evidence in the declaration (a) failed to demonstrate that "Amac Galil" was the La Penca bomber or that "Galil," if he existed, was a member of the alleged enterprise, (b) was based upon information that was not admissible in a court of law, or (c) contained no allegations of wrongdoing, knowledge, or participation on the part of Mr. Owen. (R30.1012.) Other defendants submitted similarly extensive evidence showing that plaintiffs had no admissible evidence on the issue of causation. (*See, e.g.*, R27.936; R.31.1030.)

Thus, respondents' motions for summary judgment presented evidence that both negated the causation element and pointed out petitioners' failure to produce sufficient evidence to create a genuine issue of material fact as to causation. This shifted the burden to petitioners to establish with admissible evidence the existence of a genuine issue of material fact on causation. *Celotex v. Catrett*, 477 U.S. 317, 322, 327 (1986); *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Petitioner Sheehan does not contend that petitioners produced admissible evidence on the issue of causation.

Because the entry of summary judgment was procedurally and substantively correct and because sanctions were not based on the summary judgment ruling, there is no foundation for Mr. Sheehan's convoluted argument that sanctions were defective because summary judgment was entered in violation of *Celotex*.

II. THE ENTRY OF SANCTIONS AGAINST MR. SHEEHAN COMPLIED FULLY WITH DUE PROCESS REQUIREMENTS

Petitioner Sheehan asks this Court to grant certiorari because "[t]his Court has not heretofore addressed the question of how much process is due to a respondent on a sanctions motion. An authoritative pronouncement by

this Court of the contours of that due process is necessary." (Sheehan Pet. 21.) The fact that a given question has not been resolved by the Supreme Court, however, has never been a recognized basis for the grant of certiorari. Furthermore, Petitioner Sheehan cites no conflicts with decisions of this Court or conflicts among the courts of appeals on this issue.[7] Finally, this argument has no merit.

A. Mr. Sheehan Waived An Evidentiary Hearing

There was no reason for the district court to hold an evidentiary hearing. None of the sanctioned parties requested a hearing on defendants' sanctions motions, as required by Southern District of Florida Local Rule 10.B.1,[8] and any right to a hearing was thus waived.[9] *See*

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[7] In fact, this Court recently denied certiorari, in another case where a Christic Institute attorney was sanctioned, on the issue of whether due process requires a hearing before the imposition of sanctions. *In re Kuntsler*, 111 S. Ct. 1607 (1991).

[8] Local Rule 10.B.1 provides in relevant part:

> A party who desires oral argument or a hearing of any motion *shall* request it in writing by separate request accompanying the motion or opposing memorandum. The request shall set forth in detail the reasons why a hearing is desired and would be helpful to the Court and shall estimate the time required for argument.

Fed. Local Ct. Rules, S.D. Fla., Rule 10.B.1 (emphasis added).

[9] This Court's decision in *Roadway Express v. Piper*, 447 U.S. 752 (1980), is not to the contrary. The issue of a hearing was not before the Court in that case because the district court had held a hearing and heard argument before entry of sanctions. *Id.* Moreover, while courts have cited *Roadway* for the proposition that due process requires an opportunity to be heard, it has never been held to mandate an evidentiary hearing on sanctions motions. *See, e.g., Media Duplication Services v. HDG Software*, 928 F.2d 1228, 1238 (1st Cir. 1991) (holding that "Rule 11 does not require a full hearing in every case" while noting that *Roadway* requires an opportunity for a "hearing on the record").

United States v. Nesglo, Inc., 744 F.2d 887, 890-91 (1st Cir. 1984) (where appellants failed to file an opposition to a sanctions motion and to request a hearing, their due process complaint was "entirely frivolous").

Moreover, all petitioners received notice of the possibility of sanctions and full opportunity to explain their conduct. The district court expressly warned the parties of the possibility of sanctions. Although the district court denied respondents' sanctions motions at that time, its October 5, 1987 order recited Rule 11 and warned petitioners that it might reconsider the motions:

> The Court, however, has the duty and, will not hesitate to impose such sanctions *if it becomes evident at some later point that such violations have occurred.* If the discovery process unveils sanctional [sic] abuses heretofore raised, the Court will reconsider those motions at that time.

(R.11.438) (emphasis supplied). In addition, respondents' motions for attorneys' fees and costs put all petitioners, including Mr. Sheehan, on notice of the amount and type of sanctions sought and of the legal and factual grounds for them. (*See, e.g.*, R37.1179; R38.1213.) Fair notice requires nothing more. *See, e.g., Donaldson v. Clark*, 819 F.2d 1551, 1559-60 (11th Cir. 1987) (*en banc*) (notice may be given by a party or the court orally or in written submissions).

The district court was more than solicitous in according petitioners an opportunity to be heard on respondents' motions for fees and costs. The district court several times (and twice *sua sponte*) extended the time for petitioners to file their oppositions to the motions for sanctions from July 25, 1988 through October 4, 1988. (R39.1267; 2SR1.1271; 2SR1.1272; 2SR1.1294.) The substantive opposition petitioners eventually filed was 40 pages long, with 12 pages devoted to a discussion of Rule 11, five pages to § 1927, and eight pages to the bad-faith exception to the American Rule. (2SR2.1300.) Thus, the

district court allowed petitioners, including Mr. Sheehan, more than ample opportunity to be heard on respondents' motions and made sure that they availed themselves of that opportunity.[10]

B. The District Court's Sanctions Orders Specified The Sanctioned Conduct And Sanctioning Authority

Petitioner Sheehan complains that the district court's bad-faith sanctions award failed to delineate the "conduct being sanctioned, the factual findings regarding each act, or the application of a particular sanction authority to the sanctioned acts." (Sheehan Pet. 25.) This contention ignores the district court's findings, the facts, and the law. The bad-faith sanctions were based on the groundless complaint, second amended complaint, and the nearly contemporaneous Sheehan Affidavit. 705 F. Supp. at 1545 (J. App. I, 31-A - 33-A); 125 F.R.D. at 190 (J. App. I, 51-A). The district court found that the allegations in the complaints "were based upon unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge." 705 F. Supp. at 1545 (J. App. I, 33-A). It further found that Mr. Sheehan "must have known prior to suing that [he] had no competent evidence

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[10] Petitioner Sheehan contends that "the severity of the sanction and the subjective elements on which it was based rendered an oral hearing imperative." (Sheehan Pet. 23-24.) However, the fact that petitioners caused great harm to a large number of defendants should not give them additional procedural rights. Likewise, the bad-faith basis of the sanctions does not require a hearing. Chief Judge King, who presided over the entire course of the district court proceedings, based his bad-faith findings largely on Petitioner Sheehan's own conflicting representations to the court in his affidavit and proceedings related to it. Under these circumstances, an evidentiary hearing with cross-examination was unnecessary. *See Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986) (holding a hearing is unnecessary when "the judge's participation in the proceedings provide[s] him with full knowledge of the relevant facts").

to substantiate the theories alleged in their complaint." 705 F. Supp. at 1545 (J. App. I, 32-A). The district court also found that the Sheehan Affidavit was the cause of lengthy and costly battles, including a petition for writ of mandamus to the Eleventh Circuit, for disclosure of unidentified sources many of whom were later admitted to be dead, nonexistent, unknown, or unlocatable. 705 F. Supp. at 1545 (J. App. I, 32-A); (R14.529; R15.556; R17.646). It was also the basis on which two years of costly and unproductive discovery proceeded until the grant of summary judgment. 705 F. Supp. at 1545 (J. App. I, 32-A). Further, Mr. Sheehan used his false affidavit to support many subsequent filings. (*See, e.g.*, R7.280.2; R9.378.3-5; R9.379.3; R14.520.2; R17.635.9, 11.)

Thus, all of Mr. Sheehan's conduct throughout the litigation was sanctionable and was so found by the district court, which sanctioned Mr. Sheehan "coextensively" under Rule 11, § 1927, and the bad-faith exception to the American Rule. 705 F. Supp. at 1549, n.5. Under this Court's recent decision in *Chambers v. NASCO*, 111 S. Ct. 2123 (1991), it was unnecessary for the district court to parse through various sanctioning authorities before imposing bad-faith sanctions pursuant to its inherent power:

> In circumstances such as these in which all of a litigant's conduct is deemed sanctionable, requiring a court first to apply rules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation, which is contrary to the aim of the rules themselves.

Id. at 2136.

Finally, Petitioner Sheehan contends that the district court's bad-faith findings against him are flawed because they do not include a "finding of actual knowledge or scienter." (Sheehan Pet. 25.) This argument is raised for the first time in the petition for certiorari. Moreover,

the record below amply supports a conclusion that Mr. Sheehan knew that representations in and regarding his affidavit were false. As discussed above, for example, Mr. Sheehan resisted disclosing the identities of his 66 unidentified sources in his affidavit, in part, on the ground that he feared for their safety. (*See*, *e.g.*, R10.388.5; R16.595 Ex. C.) As the author of his affidavit, however, he must have known that many of those sources whom he so fiercely protected from identification were dead, nonexistent, unknown, or unlocatable. In light of these objective record facts, which were observed by the district court, 705 F. Supp. at 1545 (J. App. I, 32-A), a specific finding of "scienter" was unnecessary.

III. THE DISTRICT COURT'S FINDINGS REGARDING THE IMPOSITION OF § 1927 SANCTIONS ON MR. SHEEHAN COMPLIED WITH DUE PROCESS REQUIREMENTS

Petitioner Sheehan asserts an additional due process argument in Point III of his petition regarding the imposition of § 1927 sanctions: that the district court's sanctions order "wholly fails to specify which 'excess' costs can be attributed to which alleged 'multiplication' of the proceedings." (Sheehan Pet. 27.) This claim has no merit.

The district court's sanctions orders specifically found that the "plaintiffs' attorneys" filed a suit "based upon unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge" and that they "must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint." 705 F. Supp. at 1545 (J. App. I, 32-A, 33-A). Mr. Sheehan's resort to fabricated witnesses and testimony in his affidavit demonstrates the groundlessness of the complaint and second amended complaint, which were based on the evidence in his affidavit. The district court's order implicitly, though unmistakably, concluded that the entire course of proceedings—consisting largely of exten-

sive litigation over disclosure of witnesses [11] and massive, fruitless discovery until entry of summary judgment—was unjustified and should neither have been commenced nor pursued. All costs and fees incurred after the filing of the complaint were therefore "excess" and properly awarded under § 1927. *In re TCI, Ltd.*, 769 F.2d 441, 448 (7th Cir. 1985) (district court had authority under § 1927 "to award the fees incurred right from the beginning" of the case where the complaint was baseless); *cf. Braley v. Campbell*, 832 F.2d 1504, 1513 (10th Cir. 1987) (*en banc*) (assessment for the entire costs of litigation on appeal is appropriate where the entire appeal is frivolous). There was no need for the district court to specify the excess costs attributable to any particular act, as Petitioner Sheehan contends, for the whole case was unwarranted from its inception.

IV. THERE IS NO CONFLICT BETWEEN THE DISTRICT COURT'S SUMMARY JUDGMENT AND SANCTIONS ORDERS

The final ground asserted by Petitioner Sheehan for this Court granting him certiorari—that "it is impossible to reconcile" the summary judgment order with the sanctions orders (Sheehan Pet. 30) is meritless. The summary judgment order found that petitioners had no admissible evidence on the issue of causation.[12] 691 F. Supp. 1357

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[11] Petitioner Sheehan contends that § 1927 sanctions based on his resistance to disclosing the unidentified sources would be "clear error." (Sheehan Pet. 27, n.10.) However, the district court did not base its sanctions order on Mr. Sheehan's resistance to disclosure but on the fact that he litigated disclosure knowing that many of the unidentified sources were dead or nonexistent.

[12] Petitioner Sheehan's contention that the district court acknowledged that plaintiffs' "evidence 'may establish' certain critical 'issues of fact'" (Sheehan Pet. 30) is wrong. The district court stated that plaintiffs' showing "may establish issues of fact concerning" only certain enumerated evidence, all incidental in nature. 691 F. Supp. at 1375 (J. App. I, 24.36-A). The district court then

(S.D. Fla. 1988) (J. App. I, 24-A). The sanctions orders found the same. 705 F. Supp. at 1545 (J. App. I, 31-A, 33-A). The additional finding of the sanctions orders that the Sheehan Affidavit was false creates no conflict with the summary judgment order.

V. THE IMPOSITION OF RULE 11 SANCTIONS ON THE CHRISTIC INSTITUTE—A REAL PARTY IN INTEREST IN THIS CASE—IS NOT CONTRARY TO THIS COURT'S DECISION IN *PAVELIC & LEFLORE*

The district court held, and a unanimous panel of the Eleventh Circuit agreed, that Rule 11 sanctions against the Christic Institute are warranted. This ruling is not in conflict with this Court's decision in *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120 (1989). The mandatory sanction of Rule 11 extends to two categories: "the person who signed [the paper], a represented party, or both." Fed. R. Civ. P. 11. *Pavelic & LeFlore* considered only the first category and held that the law firm of the attorney who signed the sanctionable paper cannot be sanctioned as "the person who signed [the paper]." It did not consider, much less decide, whether a "law firm" that is in fact a represented party, as is the case here, may be sanctioned under Rule 11.

In a very literal sense, the Christic Institute (not plaintiffs) was always the real party in interest in this litigation, under the direction of its chief counsel, Mr. Sheehan. The Christic Institute's fund-raising material made this point clear. For example, the Christic Institute characterized Tony Avirgan as the "plaintiff in the Christic Institute lawsuit." (R37.1178 Ex. I.) Elsewhere, it announced:

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went on to hold that plaintiffs made no showing on facts necessary to establish causation: "[T]hey make no showing [that] Hansen was the defendant Galil or that Hansen or Galil were associated with the enterprise, or worked with the enterprise, or were paid by the enterprise, or any of the defendants." *Id.*

"Christic Institute Presents Jackson Browne and Band: A Benefit Concert for the La Penca Lawsuit, and the Christic Institute's Contragate Project." (2SR4.1348 Ex. C.) And Mr. Sheehan, in one of his many fund-raising speeches on behalf of the Christic Institute, stated: "Well, we were quite distressed by this and we felt that we should hurry up and find ourselves a client, since we are an organization that is tax exempt, a public interest organization like the American Civil Liberties Union or the NAACP. We are allowed to engage in fomenting litigating." (R37.1218 Ex. F at 27.)

Moreover, the Christic Institute paid plaintiffs Avirgan and Honey for the use of their names, as discussed below in Point IX. The plaintiffs recognized that this suit was indeed the product of the Christic Institute and indicated their "faith" in the truthfulness of the Christic Institute's allegations, many of which were unknown to them. (2SR4.1348 Ex. D.) In addition, the Christic "Institute's name appears on all or most of the plaintiffs' filings." 125 F.R.D. at 190 (J. App. I, 51-A). Further, responses to document requests and answers to interrogatories,[13] including answers that perpetuated the falsehoods of the Sheehan Affidavit, were executed by attorneys on behalf of the Christic Institute and served without any verification by the plaintiffs.[14] Finally, this litigation achieved its massive proportions as a direct and calculated result of the formidable fund-raising efforts of the Christic Institute. Under these circumstances, *Pavelic & LeFlore*'s

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[13] Fed. R. Civ. P. 33 provides that interrogatories are "to be answered by the *party* served . . . answers are to be signed by the person making them, and the objections signed by the attorney making them." (Emphasis added.)

[14] For example, in one early set of answers, the Christic Institute identified Colonel Barrantes as a person with knowledge but refused to identify source 38 of the Sheehan Affidavit because of its "good faith belief that such disclosure would put the health and safety of such person at great risk." (R16.595 Ex. C, pp. 4-9.) Subsequent, court-compelled disclosure showed source 38 to be the same Colonel Barrantes. (R14.529.)

ruling regarding the responsibility of a traditional law partnership is simply inapposite, and there is no conflict between that case and the holding here.

Even if the Eleventh Circuit erred in affirming Rule 11 sanctions against the Christic Institute after this Court's decision in *Pavelic & LeFlore*, certiorari is not warranted for two reasons. First, few, if any, cases will present situations where law firms have engaged in conduct such as that of the Christic Institute. Second, reversal on the Rule 11 sanctions would not change the result. The entire amount of the sanctions was imposed on the Christic Institute "coextensively" under Rule 11 and the district court's inherent powers to sanction bad-faith conduct. 705 F. Supp. at 1549, n. 5 (J. App. I, 42-A). As discussed below in Point VII, a unanimous panel of the Eleventh Circuit found that the district court did not abuse its discretion in imposing bad-faith sanctions on the Christic Institute. The sanctions, therefore, are supportable on an independent ground.

VI. THE DISTRICT COURT'S IMPOSITION OF § 1927 SANCTIONS UPON THE CHRISTIC INSTITUTE DOES NOT MERIT REVIEW BY THIS COURT

Respondents do not maintain that the Christic Institute may be sanctioned under 28 U.S.C. § 1927.

Nevertheless, the district court's entry of § 1927 sanctions against the Institute does not warrant the exercise of this Court's review for several reasons. First, the plain language of § 1927 creates no ambiguity requiring resolution by this Court. By its terms, § 1927 applies only to attorneys. Sanctioning of a non-attorney under § 1927 is thus not likely to be repeated. Second, contrary to Petitioner Christic's contention (Christic Pet. 9), there is no conflict on this issue between the Fourth and Tenth Circuits. *Blue v. U.S. Dept. of Army* considered the issue of § 1927 sanctions against law firms only in dicta. 914

F.2d 525, 549 (4th Cir. 1990). *Glass v. Pfeffer* did not even involve § 1927, but rather the district court's inherent power to sanction bad-faith conduct. 849 F.2d 1261 (10th Cir. 1988). Third, reversal of the imposition of § 1927 sanctions against the Christic Institute would not change the result in this case. As explained above, the entire amount of the sanctions was also imposed under Rule 11 and the bad-faith exception, each of which independently supports the sanctions against the Christic Institute.

VII. THE DISTRICT COURT'S IMPOSITION OF BAD-FAITH SANCTIONS ON THE CHRISTIC INSTITUTE IS NOT CONTRARY TO *PAVELIC & LEFLORE*

Petitioner Christic contends that the bad-faith sanctions imposed upon it pursuant to the district court's inherent power are contrary to this Court's decision in *Pavelic & LeFlore* and reflect a conflict among the circuits. (Christic Pet. 9, 11-14.) This contention is meritless.

Pavelic & LeFlore did not address, much less determine, the scope of a district court's inherent power to sanction bad-faith conduct. Rather, *Pavelic & LeFlore* considered only the scope of Rule 11 sanctions. Its ruling that a law firm is not subject to Rule 11 sanctions is based on a textual interpretation of a written rule that sets forth with "extreme care" the persons who must be sanctioned for violation of Rule 11. 110 S. Ct. at 459. *Pavelic & LeFlore*'s textual interpretation of Rule 11 cannot be read to circumscribe a district court's exercise of its inherent power to sanction the bad-faith conduct of those who appear before it—whether they be litigants, attorneys or law firms. This Court's subsequent decision in *Chambers v. NASCO* supports this view. 111 S. Ct. 2123 (1991). *Chambers* recognized the fundamental difference between sanctions imposed under statutes and rules and those imposed under a district court's inherent power.

> We discern no basis for holding that the sanctioning scheme of the statute and the rules displace the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions. First, whereas each of the other mechanisms reaches only certain individuals or conduct, the inherent power extends to a full range of litigating abuses. At the very least, the inherent power must continue to exist to fill in the interstices. Even the dissent so concedes.

111 S. Ct. at 2134.

The Eleventh Circuit's affirmance of bad-faith sanctions against the Christic Institute—even if viewed only as the law firm of plaintiffs' counsel rather than a real party in interest—is in accord with a Tenth Circuit decision upholding bad-faith sanctions against a law firm. *See Glass v. Pfeffer*, 849 F.2d 1261 (10th Cir. 1988). Petitioner Christic relies on the Fourth Circuit's decision in *Blue v. U.S. Dept. of Army*, 914 F.2d 525 (4th Cir. 1990), to suggest that there is a conflict in the circuits on this issue. (Christic Pet. 9.) However, the Fourth Circuit in *Blue* specifically declined to determine whether a law firm is subject to sanction under the district court's inherent power:

> Because there is no basis in this record upon which to sanction the law firm, we need not address the question whether a law firm can ever be sanctioned under the theories [including inherent power] invoked by the district court.

914 F.2d at 549. The Fourth Circuit's failure to decide when a law firm may be sanctioned is no ground for concluding that there is a split in the circuits.

VIII. THE ENTRY OF SANCTIONS AGAINST THE CHRISTIC INSTITUTE COMPLIED FULLY WITH DUE PROCESS REQUIREMENTS

The Christic Institute argues in Point III of its petition that "[t]he district court's failure to hold a hearing of any sort prior to assessing a huge punitive sanction and the panel's affirmance thereof is error of constitutional moment." (Christic Pet. 17.) That argument is meritless.

A. The Christic Institute Waived An Evidentiary Hearing

The Christic Institute waived any right it had to an evidentiary hearing when, like Mr. Sheehan, it failed to request a hearing as required by Local Rule 10.B.1. *See*, Point II, *supra*. Furthermore, as noted above, the Christic Institute received a fully adequate opportunity to make written submissions on the sanctions issue.

B. The District Court's Findings Were Sufficiently Specific

The district court's findings were sufficiently specific to comport with this Court's ruling in *Chambers*. As discussed above in Point V, the Christic Institute was a law firm in search of a plaintiff. Its goals were not the judicial resolution of a valid claim but rather exploitation of the subpoena power of the federal courts to conduct its own Iran/Contra investigation and to enhance its revenue-raising capabilities.[15] Against this backdrop, the district court found that the Christic Institute was so eager to launch its own Iran/Contra investigation that, in the name of its paid plaintiffs, it brought this suit based only upon "unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge." 705

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[15] Petitioners described their lawsuit as the "legal equivalent of a federal criminal grand jury investigation." (R6.263.4 n.1 and attachment.)

F. Supp. at 1545 (J. App. I, 33-A). Accordingly, the district court found that the Christic Institute's attorneys "must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint." *Id.* at 1545 (J. App. I, 32-A). As the district court further found, the Christic Institute's conduct constituted an "abuse of the judicial process." *Id.* at 1545 (J. App. I, 33-A).

IX. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING BAD-FAITH SANCTIONS ON PLAINTIFFS AVIRGAN AND HONEY

Petitioners Avirgan and Honey have presented no reason for this Court to review the district court's imposition of bad-faith sanctions on them. The district court's decision is not at odds with any decision of this Court. To the contrary, this Court's recent decision in *Chambers* upheld bad-faith sanctions in the entire amount of the defendant's attorney's fees—almost $1 million—against a non-lawyer plaintiff such as Avirgan and Honey. 111 S. Ct. 2123.[16] Likewise, Petitioners Avirgan and Honey have not suggested, much less demonstrated, any conflict in the circuit courts on the issue of whether lay clients are subject to bad-faith sanctions. Like the Sheehan and Christic petitions, the petition of Avirgan and Honey merely asks this Court to engage in a fact-specific determination of whether the district court abused its discretion in imposing bad-faith sanctions against them.

In any case, review of the sanctions orders and the record below demonstrates that the district court did not abuse its discretion in sanctioning Mr. Avirgan and Ms. Honey. This is not the typical case where the client pays

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[16] *Chambers* followed prior decisions of this court upholding bad-faith sanctions against litigants. *See, e.g., Roadway Express Inc. v. Piper*, 447 U.S. 752, 766 (1980) (reasoning that attorneys are subject to bad-faith sanctions precisely because litigants are).

for litigation or even receives free services. Rather, as found by the district court, these plaintiffs were paid by the Christic Institute "approximately $50,000 for consultation, public speaking, and trips from Costa Rica to the United States." 125 F.R.D. at 190 (J. App. I, 51-A).

Nor is this the typical case of a client merely relying on its attorneys and passively waiting for a result. Avirgan and Honey are as responsible as Sheehan and the Christic Institute for filing a baseless complaint. By the time the complaint was filed, Avirgan and Honey had conducted an investigation and written a report on the La Penca bombing. (Avirgan & Honey Pet. 3.) That investigation produced no witnesses who could show that any of the defendants were responsible for the La Penca bombing.[17] The failure of their own investigation to produce even one such witness should have alerted plaintiffs to the baselessness of the allegations of Sheehan and the Christic Institute when the latter recruited them to be plaintiffs.[18] As the district court found, "plaintiffs 'had every reason to know they stood no chance of proving' that the defendants were responsible for the injuries to Tony Avirgan." 705 F. Supp. at 1545 (J. App. I, 33-A).

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[17] The district court specifically found that "[a]fter two years of protracted and extensive discovery of scores of witnesses across the United States, Costa Rica, and elsewhere, the plaintiffs were unable to produce a single witness who could state that the defendants exploded the bomb or were responsible for the assassination attempt." 705 F. Supp. at 1545 (J. App. I, 31-A). *A fortiori*, they had no such evidence when they concluded their investigation or when they filed their complaint.

[18] The outcome of John Hull's criminal libel suit against Petitioners Avirgan and Honey has no bearing on the sanctions issue here. Even the garbled and uncertified translation that petitioners submitted to the district court (R3.103) shows that the Costa Rican judgment in no way validated the Avirgan-Honey investigation so that Avirgan or Honey could rely on its conclusions. All the court held was that Avirgan and Honey lacked the necessary intent to injure required to sustain the criminal charges. *Id.*

Moreover, the complaint to which Petitioners Avirgan and Honey sold their names went far beyond anything related to their investigation of the La Penca bombing. The complaint alleged a thirty-year conspiracy spanning four continents. Mr. Avirgan and Ms. Honey admitted at their depositions that they had no knowledge of any basis for the allegations in the complaint against many respondents, such as Shackley and Singlaub. (*See, e.g.*, R45.1202.98; R45.1202.112; R45.1202.288-90; R45.1202.93-94.) Such reckless disregard for the factual basis of a complaint filed in their names constitutes bad faith. Avirgan and Honey were witting and compensated participants in a groundless lawsuit that cost the respondents large sums of money, a significant amount of time that can never be recovered, and a great deal of anguish. They cannot avoid the consequences of their recklessness by hiding behind their attorneys.

Likewise, the continued participation of Petitioners Avirgan and Honey in this case constituted bad faith. Their contention that the case "proceeded with little or no involvement of the plaintiffs" except attendance at their own depositions and answering interrogatories (Avirgan & Honey Pet. 4) is belied by the facts. First, Petitioners Avirgan and Honey continued their investigation long after they wrote their report and met Mr. Sheehan. (*Id.* at 9.) Their own continued failure to unearth any competent evidence that the respondents caused the La Penca bombing should have alerted them to the groundlessness of the suit. Second, they met frequently with Christic Institute attorneys in the United States and Costa Rica and engaged in fund-raising for the litigation, activities for which they were compensated by the Institute. 125 F.R.D. at 190 (J. App. I, 51-A). Their continued assistance gave knowing support to Mr. Sheehan's conduct, which the lower courts found clearly sanctionable.

As the foregoing demonstrates, the district court's imposition of bad-faith sanctions against Petitioners Avirgan and Honey does not conflict with any decision of this Court, creates no conflict among the courts of appeals, and does not constitute an abuse of discretion.

CONCLUSION

For the foregoing reasons, the petitions of Mr. Sheehan, the Christic Institute, and plaintiffs Avirgan and Honey for writs of certiorari should each be denied.

Respectfully submitted,

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Nos. 91-617, 91-618, 91-619

In The
Supreme Court of the United States
October Term, 1991

Tony AVIRGAN, Martha HONEY, Daniel P. SHEEHAN, and THE CHRISTIC INSTITUTE,
Petitioners,

versus

John HULL, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE TO FILE and BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF PETITIONS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF PETITIONS

Trial Lawyers for Public Justice, P.C., moves this Court for leave to file the attached brief *amicus curiae* supporting the petitions for certiorari on the issue of sanctions. Petitioners have consented to this motion. Respondent Singlaub, through his counsel of record, has opposed it.

INTEREST OF THE *AMICUS*

Trial Lawyers for Public Justice is a national public interest law firm dedicated to using the skills and approaches of plaintiffs' trial lawyers to advance the public good. Supported by and operating through a nationwide network of nearly 1000 of the country's outstanding trial lawyers, TLPJ pursues precedent-setting and socially significant litigation in both the federal and state courts. Through such litigation, it seeks to advance consumer and victims' rights, environmental protection and safety, civil rights and civil liberties, occupational health and employees' rights, and the protection of the poor and the powerless.

TLPJ has three reasons for being particularly interested in the sanctions issue in this case. First, to an extremely limited extent, TLPJ was directly involved in some of the proceedings below. Over four years ago, in October 1987, TLPJ and forty-five of its cooperating attorneys sought leave to enter appearances below for the limited purpose of taking depositions on plaintiffs' behalf.

The district court denied the motion, stating that attorneys could take depositions for the parties without entering their appearances in the case. Several TLPJ cooperating attorneys then proceeded to take depositions. Neither their conduct nor TLPJ's is in any way related to the entry of sanctions, but, as a direct result of our limited involvement below, we are convinced that plaintiffs' pre-filing investigation was extraordinary and that the case was filed and pursued in good faith.

Second, TLPJ is gravely concerned about the effect that the massive sanctions imposed in this case will have on the ability of all potential plaintiffs to pursue justice in the federal courts. The trial lawyers who perform and support TLPJ's work participate daily in virtually every type of litigation conducted in the federal courts: personal injury, commercial, civil rights, products liability, consumer, RICO, antitrust and securities class actions, etc. If the sanctions entered here are appropriate, then the entire plaintiffs' trial bar is at risk, as is the ability of all victims of tortious and criminal conduct to obtain adequate representation.

Third, as a public interest law firm, TLPJ is especially aware of and disturbed by the deleterious impact that the huge sanctions award issued in this case will have on the practice of public interest law. The courts below imposed over $1 million in sanctions jointly and severally against the individual attorney, the public interest law firm by which he is employed, and the individual clients without differentiating between the legal standards applicable to and the conduct of each. An award of this magnitude with no clear enunciation of the legal duties of the lawyer, the firm, and the clients seriously chills the practice of public interest law and the willingness of potential public interest clients to participate in litigation.

REASONS FOR GRANTING THE MOTION

TLPJ seeks leave to file the attached brief *amicus curiae* because of its concerns about the grave threat that the sanctions entered below poses to the general practice of law and the future of public interest litigation in the federal courts. The brief stresses two reasons for granting certiorari.

First, given the extraordinary pre-filing investigation in this case and the reasons provided by the courts below for imposing sanctions, the entry of sanctions here constitutes a danger to all who litigate in the federal courts. Plaintiffs' pre-filing investigation and demonstration of facts in this case went far beyond what most plaintiffs or their lawyers do or are capable of doing. If they can be sanctioned here on the ground that the case should never have been filed, no lawyer, no law firm, and no client is safe.

Second, the utter failure of the courts below to differentiate between the conduct of and legal standards applicable to the attorney, the public interest law firm for which he works, and the clients will seriously impact the future of public interest litigation. If sanctions of this magnitude are going to be considered, much less awarded, then the respective legal duties of the lawyers, the law firm, and the clients have to be absolutely clear. Otherwise, public interest litigation -- in which the clients are usually motivated by matters other than their interest in receiving monetary compensation -- is likely to be significantly deterred.

WHEREFORE, TLPJ respectfully urges this Court to grant its motion for leave to file the attached brief *amicus curiae*.

December 16, 1991 Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF PETITIONS

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BRIEF *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICUS*

The interest of the *amicus* is set forth in the accompanying motion for leave to file this brief.

STATEMENT OF THE CASE

We hereby adopt and incorporate by reference the Statement of the Case contained in the Petition for Writ of Certiorari of the Christic Institute.

REASONS FOR GRANTING THE WRIT

We write separately to stress two grounds for granting the writ:

1. Given the facts of this case, the entry of sanctions constitutes a danger to all who litigate in the federal courts. There are three reasons this is so:

a. While the courts below did not mention it at all, plaintiffs' pre-filing investigation and demonstration of the facts underlying their allegations were extraordinary. The plaintiffs in this case, professional journalists, spent over a year interviewing scores of sources throughout the world in order to find out who was responsible for the La Penca bombing and their injuries. They then published an investigative report blaming many of the individuals later named as defendants, including John Hull. When Hull responded by filing criminal libel charges against them in Costa Rica, they went to court and won; the judge

specifically found that their conclusions were supported by "a serious and meticulous analysis of all the interviews, ... documents, tapings, and filmings" and could in no way "be considered as irresponsible." R3.103-App.I at 7.

It was only after this extensive investigation and the Costa Rican court's specific finding that their allegations were well supported that Avirgan and Honey filed the instant lawsuit. For the courts below to enter sanctions on the ground that the case should never have been filed is, therefore, incredible. Very few plaintiffs or their lawyers have ever done (or could ever do) more to investigate and demonstrate the validity of their allegations prior to filing suit.

The primary case cited by the courts below to support the imposition of sanctions, *Collins v. Walden*, 834 F.2d 961 (11th Cir. 1987) (*Collins* II), moreover, only underscores the propriety of plaintiffs' and their counsel's actions in this case. In *Collins* II, the plaintiffs had previously filed a lawsuit based on precisely the same facts and theories. During the course of the first suit, the district court had noted indications in the record that the plaintiffs' motive appeared to be harassment and explicitly told them that, if that was so, sanctions might ultimately be imposed. *Id.* at 963. After extensive discovery, the case was dismissed because, among other things, plaintiffs failed to produce or discover any evidence to support their allegations. *Id.* at 964. The Eleventh Circuit affirmed the dismissal, *Collins v. Walden*, 784 F.2d 402 (11th Cir. 1986)(*Collins* I), but despite the district court's warning, no sanctions were imposed.

Then, plaintiffs and their counsel filed a second suit essentially making the same allegations. This time, the district court imposed sanctions, in addition to dismissing the case. The Eleventh Circuit, quite understandably, affirmed. *Collins* II, *supra.*

The contrast between this case and *Collins* could hardly be more stark. Here, plaintiffs conducted an extensive investigation and, despite the absence of discovery, adduced sufficient evidence in support of their charges to actually win a libel case. Then, they instituted this lawsuit, fully intending to take the discovery to which they were, for the first time, entitled. If sanctions can be entered against them, then virtually all federal court litigators (who necessarily do far less pre-filing investigation) are at risk.

b. While some of the district court's factual assertions (quoted and relied upon by the appellate court) are, unfortunately, clearly erroneous, the primary factual grounds offered for the entry of sanctions below were that plaintiffs relied on hearsay in filing their case, that plaintiffs resisted defendants' discovery efforts, that some witnesses testified differently under oath than plaintiffs' counsel expected them to, and that, after two years of discovery, plaintiffs were unable to withstand defendants' motion for summary judgment. These things happen in litigation throughout the federal courts every day. They do not support a finding that plaintiffs or their counsel did anything wrong, much less that sanctions are appropriate.

In this respect, what the courts below did not do is at least as important as what they did do. At no time did they find that plaintiffs' claims were "entirely without color and ha[d] been asserted wantonly, for purposes of harassment or delay, or for other improper reasons." *Browning Debenture Holders' Committee v. Dasa Corporation*, 560 F. 2d 1078, 1088 (2d Cir. 1977) (defining standard for bad faith). Nor did they comply with the procedural safeguards that controlling precedent imposed in regard to a finding of bad faith or improper purpose. See *Donaldson v. Clark*, 819 F. 2d 1551 (11th Cir. 1987) (procedural requirements for Rule

11 sanctions); *Rothenberg v. Security Management Co. Inc.*, 736 F. 2d 1470 (llth Cir. 1984) (findings required for sanctions for bad faith). Instead, based on aspects of the case that were in no way unusual, the courts simply held that sanctions were appropriate. Such unrestrained judicial activism poses a severe threat to all who litigate in the federal courts.

c. While the courts below did not discuss the law applicable to sanctions in any detail, the primary legal ground they gave for the entry of sanctions is that plaintiffs and their counsel "must have known prior to suing that they had no competent evidence to [prove their case]." Even if plaintiffs and their counsel had known this prior to suing (we believe otherwise), that would not be a proper basis for the imposition of sanctions. Responsible attorneys routinely file cases without having competent evidence to prove their allegations; they reasonably believe that such evidence will be obtained through discovery. Neither they nor their clients should be subject to sanctions for following this entirely appropriate course of conduct.

To offer but one of what could be thousands of examples, in *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corporation*, 475 U.S. 574 (1986), two American television manufacturers sued 21 Japanese television manufacturers, charging that the defendants had conspired to drive American firms from the American television market. After several years of discovery far more voluminous than that taken below, summary judgment was entered in defendants' favor. The lower courts held, and this Court agreed, that plaintiffs had neither discovered nor produced any admissible evidence that raised a genuine issue of material fact as to the existence of the alleged conspiracy. Under the approach of the courts below in this case,

therefore, sanctions should have been entered against plaintiffs' counsel because they "must have known prior to suing that they had no competent evidence to prove their case." In fact, however, no sanctions were entered. Indeed, no sanctions were even discussed. That is how it should be. That is also why the sanctions entered here pose such a danger.

2. The sanctions rulings here pose an especially grave threat to those who practice or seek to participate in public interest litigation. This is so because the decisions below fail to draw any distinctions between the conduct of and legal duties applicable to the individual attorney, the public interest law firm that employs him, and the clients. The courts below consistently treat these different sanctioned parties as if they are interchangeable and as if improper conduct by one is automatically attributable to all -- at a price of over one million dollars.

As this Court knows, public interest litigation is generally conducted by dedicated and principled attorneys working for comparatively meager wages. The organizations that employ these lawyers are themselves usually underfunded and dependent upon financial contributions for their support. Public interest clients, moreover, are usually motivated more by concern for principle and the public good than they are by an interest in obtaining financial compensation. For all of these reasons, any threat of significant monetary sanctions is likely to be particularly chilling on those who participate in public interest litigation.

Given these considerations, it is especially important that, if monetary sanctions are to be considered, much less awarded, the legal standards applicable to the conduct of public interest lawyers, law firms, and clients, respectively, be absolutely clear. This case both demonstrates the need to

-- and gives the Court the opportunity -- to clarify those legal standards. If those standards remain unclear, particularly considering the enormity of the sanctions award in this case, the practice of public interest law will inevitably be chilled.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

December 16, 1991

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MOTION FILED
DEC 16 1991

Nos. 91-617, 91-618, 91-619

In The
Supreme Court of the United States
October Term, 1991

Tony AVIRGAN, Martha HONEY, Daniel P. SHEEHAN, and THE CHRISTIC INSTITUTE,
Petitioners,

versus

John HULL, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* and BRIEF *AMICUS CURIAE* OF NATIONAL COUNCIL OF CHURCHES OF CHRIST, *et al.* IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF NATIONAL COUNCIL OF CHURCHES OF CHRIST, *ET AL.* IN SUPPORT OF PETITIONERS

Respondent Singlaub, through his counsel of record, opposed the filing of the attached brief *amicus curiae*. Accordingly, *amici curiae*[1] (certain national religious organizations), by their undersigned attorney and pursuant to Rule 37 of the Rules of the Supreme Court, respectfully move this Court to grant permission to file the attached *amicus* brief. The brief is being submitted within the time allowed petitioners, whose position it supports.

These organizations request leave to file a brief *amicus curiae* in the matter of *Avirgan v. Hull* so that this Court may consider arguments for reversing the orders below assessing sanctions against plaintiffs' and their counsel. Each of the *amici*[2] herein has interests which may be affected by the decision of this matter, and those interests are distinct from the interests of the parties to this matter. Because the perspective and issues presented herein were not addressed in depth by the petitioners, *amici* believe that the Court and the interests of justice will be served by consideration of this brief *amicus curiae*.

Amici seek a resolution of the questions, "May injured

---

[1]*Amici curiae* herein consist of the following organizations: National Council of Churches of Christ in the U.S.A., Church of the Brethren, Church Women United, Conference of Major Superiors of Men, Peace Fellowship of the Christian Church (Disciples of Christ), Leadership Conference of Women Religious (Executive Committee), the Maryknoll Fathers and Brothers, and the General Conference Mennonite Church.

[2]The specific interests of the *amici curiae* are set forth in Appendix A.

persons seek the aid of the court to discover evidence as to the persons responsible for their injuries?" "Will the court lend its aid even if a preliminary inquiry discloses the possibility of involvement by high officials of the executive branch who may interpose claims of privilege?" The plaintiffs' claim for relief in this matter was not based upon any views that they may have had on United States foreign policy, but their rights under the law. The plaintiffs pursued their case under circumstances which included Executive branch officials lying to Congress about their activities in Central America, the shredding of documents, and the withholding of much relevant evidence by agencies of the Executive branch. Against such opposition, the plaintiffs' sole hope for legal compensation was to resort to an independent judiciary to compel the production of evidence for determination of their case by a jury.

The sanctions order entered in this case demonstrates that the effectiveness of a judicial remedy depends in large measure on the careful exercise by the courts of their power to compel the production of evidence. While investigations and the discovery of evidence might be categorized as the job of the public prosecutor, the wisdom of the checks and balances in the United States government can be seen in part in the ability of courts to order discovery without the aid, and even with the opposition of, the Executive. The disposition of the appeal in this matter tests whether the courts of the United States remain independent sources of such power that can be used as a safeguard against failures in the Legislative or Executive branch.

The *amici* have a strong interest in maintaining access to the courts for parties such as the plaintiffs in the underlying action. *Amici* also have an interest in access to the assistance of counsel, such as the Christic Institute who served as private attorneys general in the case below. In enacting the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 28 U.S.C. 1964, Congress

intended to encourage private attorneys general. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 493, 105 S.Ct. 3275, 3283, 87 L.Ed.2d 346 (1985). The imposition of sanctions in this matter deters private parties from vindicating public interests, both because of the unreasonable standard for "competent evidence" prior to the filing of a complaint, and the staggering size of the award.

In sum, *amici* ask this Court to protect access to legal remedies where the Executive has failed to "take Care that the Laws be faithfully executed." U.S. Constitution, Art. II, § 3. This is a matter not only of private interest to the plaintiffs, but a matter of public interest in maintaining the integrity of the Constitutional scheme of government. History has demonstrated that no one branch can be trusted entirely to safeguard the liberty of the American people, and demonstrated as well the effectiveness of a Constitution which so divides the powers and responsibilities of governing that failures and abuses in one branch can be corrected by the vigorous exercise of the remedial powers of another.

CONCLUSION

Because of the significance of this case to meaningful access to the Federal Courts, *amici* request leave to file a brief *amicus curiae* with the Court.

Respectfully submitted,

December 16, 1991

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QUESTIONS PRESENTED

I. Did the district court and the panel err in requiring the petitioners' pre-filing inquiry to obtain the sufficiency of evidence which should be obtained through discovery?

II. Did the district court and the panel err in failing to consider Congressional intent to encourage private litigators to use discovery under the RICO statute as a safeguard against corruption?

III. Did the district court and the panel err in failing to consider the circumstances under which petitioners conducted their inquiries prior to filing the complaint?

IV. Does the district court decision create an appearance of improper consideration of the political implications of plaintiffs' case?

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INTEREST OF *AMICI CURIAE*

Amici curiae are religious organizations committed to working for a more just, equal and humane society through peaceful and democratic means. As strong advocates of social justice and government accountability, *amici curiae* believe that open access to the civil court system for litigants challenging ill-conceived or illegal governmental activity is central to the health and survival of the democratic system of government. The imposition of sanctions in this matter deters private parties from vindicating public interests, both because of the unreasonable pre-filing evidentiary standard propounded, and the staggering size of the award.

Anyone concerned for the robust operation of democracy cannot but be distressed to see the federal courts fail to exercise an independent role in supporting citizen action to apprehend wrong-doing by those in high places. In this instance two journalists (and a public-interest law firm), at great risk to themselves (as evidenced by their injury in the bombing of a press conference that is the very gravamen of their complaint), uncovered the edges of an elaborate illegal operation involving officials of the U.S. government and their confederates in gun-running and drug-trafficking. Their acumen has since been vindicated by the indictment and conviction of numerous participants in that cabal. But rather than being acclaimed and rewarded for their role as "private attorneys general" in unearthing this criminal activity, the plaintiffs in this case have been criticized by the courts for their temerity and saddled with an incredibly outrageous financial penalty! It defies belief that the defendants in this case, who responded to this suit with indignation and sought shelter behind various claims of privilege, but nevertheless were (subsequently) made to answer for their offenses, first intimated in this suit, are now to be rewarded by sanctions against those who first sought to call them to account. That is only the opposite of the way things ought to be, and the

Supreme Court now has a final opportunity to set them straight, so that the self-corrective processes of democracy will be reinvigorated rather than stifled by judicial action.

Because of the significance of this case to meaningful access to the federal judiciary by victims of governmental malfeasance, *amici* respectfully urge this Court to grant petitioners' applications for certiorari.

STATEMENT OF THE CASE

The district court ruled and the panel affirmed a sanction in excess of $1 million against the petitioners Tony Avirgan and Martha Honey. That sanction was imposed jointly and severally against them and their lead counsel, petitioner Daniel Sheehan, and his public interest law firm and employer, petitioner Christic Institute. As used herein, the term plaintiffs shall mean only petitioners Avirgan and Honey; the term petitioners shall include plaintiffs, Sheehan and Christic. *Amici* adopt the statement of the case included in the brief of petitioners Tony Avirgan and Martha Honey.

SUMMARY OF THE ARGUMENT

The sanctions order at issue here represents not a failure by plaintiffs or their counsel to fulfill obligations of litigants, but a failure of the district court to fulfill its responsibilities in the exercise of judicial authority. The plaintiffs' case called upon the judicial branch to protect the interests of private citizens who suffered real injury in the course of events that became the subject of an intense political debate. Plaintiffs could not turn to the Legislative or Executive branch to remedy that injury, as those coordinate branches were principally concerned with public policy, and in any event lacked the powe to compensate for private injury. Their resort to the judicial branch has resulted, not in the production of evidence relevant to their case, but punishment

for raising a matter that caused controversy.

The political controversy that has been labelled "the Iran-Contra affair" increased the need for the courts to function as a truly independent branch of government, compelling the production of relevant evidence regardless of political consequences. In circumstances in which the Executive and Legislative branches' handling of the Iran-Contra affair has generated distrust and public skepticism, the action of the district court in punishing plaintiffs and their counsel for bringing this suit creates the impression that their punishment is based not upon an absence of evidence required by law, but upon the district court's resentment of the political controversy surrounding the case.

The sanctions order at issue here strikes at the integrity of the judicial process. This ruling imposes on plaintiffs, as a condition of admission to the court, that they must first obtain evidence normally gathered through the discovery process. Such a rule would destroy the effectiveness of civil litigation generally, and particularly its function as a safeguard against the failure of public prosecutors to bring to the courts cases involving violations of law by public officials or their political associates.

The attempt by the court below to shift its responsibilities to the plaintiffs is not only in conflict with the principle that private attorneys general are to be encouraged to use the courts to remedy legal wrongs, but also suggests that the judicial branch lacks the independence to uncover facts which may be embarrassing to political officials in the other branches.

This Court must send the strongest possible signal of disapproval to correct this misapplication of the law. It is vital that this Court set forth clear standards to prevent future abuses in the application of punitive provisions of procedural law.

ARGUMENT

I. The District Court and the Panel Erred in Requiring the Plaintiffs' Pre-filing Inquiry to Obtain the Sufficiency of Evidence Which Ordinarily Should Be Obtained Through Discovery

The district court's order of February 2, 1989, affirmed by the Eleventh Circuit panel, *Avirgan v. Hull*, 932 F.2d 1572 (11th Cir. 1991), stated as a basis for the award of costs and fees its finding that:

> The attorneys for the plaintiffs, the Christic Institute, must have known prior to suing that they had no competent evidence to substantiate the theories alleged in their complaint.

Avirgan v. Hull, 705 F. Supp. 1544, 1545 (S.D.Fla. 1989). This statement is apparently an interpretation of the standards of Rule 11, 28 U.S.C. 1927, or the "bad faith" exception to the American Rule, though it badly misstates those standards. By its use of the term "competent" to modify "evidence," the court has effectively replaced the "well grounded in fact" standard of Rule 11 with a hurdle that precious few complaints will clear. By requiring a plaintiffs' attorney to have "prior to suing" not only "knowledge, information and belief," but "competent evidence," the district court has held that a plaintiff must possess admissible evidence sufficient to prove their case prior to the filing of a complaint and discovery.

This evidentiary standard makes a mockery of court rules governing the discovery of evidence. Discovery is designed to employ the powers of the court as a device for ascertaining the facts prior to the time of trial. *Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 389 (1947). The

provisions for subpoenas (Fed.R.Civ.P. 45) and compelled discovery (Fed.R.Civ.P. 37) make clear that the court is not to be a mere passive bystander, but that "if a plaintiff has a case he should be aided in fishing it out..." (emphasis in original) James A. Pike, John W. Willis, "The New Federal Deposition-Discovery Procedure," 38 Col.L.Rev. 1179, 1194 (1938). The reasoning of the district court and the panel are not only inconsistent with the basic philosophy of the rules governing discovery, but with the express guidance of the Eleventh Circuit; "The reasonable inquiry standard of Rule 11 does not preclude plaintiffs from establishing the merits of claims through discovery." *Donaldson v. Clark*, 819 F.2d 1551, 1561 (11th Cir. 1987)(in banc).

Here, the district court expressed reluctance to fulfill its responsibilities to supervise discovery:

> You all have vastly more experience than I do with discovery problems. I don't deal with them and I haven't in a long time ... I may have to start saying, all right, you say you can't agree, you say this [is] a real serious legal issue and we will sit down and we will go through it. If I find it is not, then somebody is going to get taxed with costs and fees. I don't say to you that I am going to do that. I say to you the time may be coming because I can't keep on with all this discovery mess that you all are throwing at each other. So I caution you about that. [Transcript of Hearing before Judge King, *Avirgan v. Hull*, Case No. 86-1146, Oct. 28, 1987, p. 50-51.]

This is strong evidence that the district court has actually punished plaintiffs for seeking the aid of the court in discovering evidence. Regardless of how impatient a court may become with acrimonious proceedings, the court cannot impose upon a plaintiff the full responsibility for discovering evidence before initiating proceedings in which the court

shares responsibility for assisting in the discovery of evidence.

The district court's attempt to substitute a requirement of proving a case through a pre-filing inquiry, rather than through properly supervised discovery, has the effect of closing the doors of the courts. This violates fundamental values of the American justice system:

> Freedom of access of the courts is a cherished value in our democratic society. Incremental changes in settled rules of law often result from litigation. The courts provide the mechanism for the peaceful resolution of disputes that might otherwise rise to attempts at self-help. There is, and should be, the strongest presumption of open access to all levels of the judicial system. Creating a risk that the invocation of the judicial process may give rise to punitive sanctions simply because the litigant's claim is unmeritorious could only deter the legitimate exercise of the right to seek a peaceful redress of grievances through judicial means. . . . [T]he strong presumption is against the imposition of sanctions for invoking the processes of the law.

Talamini v. All-State Insurance Co., 470 U.S. 1067, 105 S.Ct. 1824, 1827-1828, 85 L.Ed.2d 125 (1985) (Stevens, J., joined by Brennan, Marshall and Blackmun, concurring), quoted in *Operating Engineers Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988).

So long as this million-dollar sanctions order stands, it is a warning to injured parties that they should not turn to the courts to ferret out the truth, if those who injured them have had the assistance of powerful friends to aid in hiding evidence. Such a standard not only makes discovery irrelevant as a legal procedure, but effectively closes the doors of our courts to many persons who have suffered compensable harm.

II. The District Court and the Panel Erred in Failing to Consider Congressional Intent to Encourage Private Litigators to Use Discovery Under the RICO Statute as a Safeguard Against Corruption

The need for availability of the powers of the courts to discover evidence, while clearly strong in any civil litigation, is heightened in those situations where Congress has acted to encourage private attorneys general to bring suits to safeguard important public interests. In awarding sanctions, the court below failed to consider the importance of Congress' decision to encourage civil plaintiffs to use the power of the courts to discover and deter criminal enterprises. Like the attorney fee provisions of the Civil Rights statutes, these provisions were intended to encourage "private attorneys general" to bring suits to vindicate public interests. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 493, 105 S.Ct. 3275, 3283, 87 L.Ed.2d 346 (1985).

Where, as here, the circumstances of the case suggest the potential of corruption or improper influence of government officials, the need for independent exercise of the judicial power to compel discovery is further increased. While the civil provisions of RICO, 18 U.S.C. 1964(c) "fill prosecutorial gaps," *Sedima, supra*, the legislative history of RICO demonstrates that the statute's remedial purposes also included safeguarding against the corruption of public prosecutors. In adopting the bill that included RICO, Congress expressly found that criminal enterprises were using their power "to subvert and corrupt our democratic processes." 84 Stat. 922-23 (1970).

The need for judicial deference to Congressional determinations of the public interest in the application of Rule 11 has been noted elsewhere:

> The existence of a pro-plaintiff fee-shifting statute designed to ensure the availability of a pool of competent counsel is an independent reason to use Rule 11 sparingly, in order to avoid both conflict with Congress' policy judgments and challenges to the Rule's validity. (citation omitted)

American Judicature Society, *Rule 11 in Transition: The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11*, at 72 (1989).

Prior to its entering of sanctions, the district court had notice that several of the defendants in this matter had been indicted for offenses alleged in the civil complaint. Defendants Secord and Hakim were indicted by a Washington, DC grand jury on March 16, 1988 on charges that included allegations of conspiracy with certain government officials to commit crimes resembling the allegations in the plaintiffs' complaint here. Case No. CR-88-0080-GAG, March 16, 1989, United States District Court for the District of Columbia. Secord and Hakim moved the district court for a delay in this civil case because of the conflict with their criminal trial. Both were convicted after entering guilty pleas in November, 1989.

Two government officials who cooperated with the enterprise alleged in the underlying case have been convicted for those activities; Oliver North, in Case. No. CR-88-0080(GAG), United States District Court for the District of Columbia, judgment docketed July 13, 1989 - this conviction was reversed on appeal, *U.S. v. North*, 910 F.2d 843, *modified*, 920 F.2d 940 (D.C. Cir. 1990) when the court determined that testimony used against North at trial was tainted by testimony he gave to Congress three years earlier under a grant of immunity; and Robert MacFarlane in Case No. CR-88-0078(AER), United States District Court for the District of Columbia, judgment entered March 8, 1989. A

third government official was convicted on similar charges on April 7, 1990; John Poindexter, CR-88-0080-GAG, United States District Court for the District of Columbia (Poindexter's conviction was later overturned on the same grounds as North's conviction, *U.S. v. Poindexter*, 1991 WL 235749 (D.C. Cir. Nov. 15, 1991). Oliver North and John Poindexter were indicted together with defendants Secord and Hakim.

A fourth official, Joe Fernandez, was indicted on related charges, Case No. 89-150-A, United States District Court for the Northern District of Virginia. The Fernandez case was dismissed on November 24, 1989 after United States Attorney General Richard Thornburg blocked the disclosure of classified information. *U.S. v. Fernandez*, 913 F.2d 148 (4th Cir. 1990).[1]

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[1]The Independent Counsel, Lawrence Walsh, complained to Congress that "[t]he Administration's actions in *United States v. Fernandez* and in other Iran/Contra prosecutions underscore the need for objective standards to govern the release of classified information in criminal prosecutions...[there is] an appearance of conflict of interest [because] the agency refusing disclosure [the CIA] is itself a subject of investigation." Independent Counsel's Supplement to Previous Reports Regarding *United States v. Fernandez*, submitted to the Intelligence Committees and Judiciary Committees of both houses of Congress on October 24, 1990.

Since the opinion of the Eleventh Circuit panel upholding sanctions, three additional high-ranking executive branch officials have been indicted, and two convicted, for obstructing official investigations of the enterprise defined in plaintiffs' complaint: Claire George in Case No. CR-91-521-RCL, United States District Court for the District of Columbia; Elliot Abrams in Case No. CR-91-575, United States District Court for the District of Columbia, judgment entered October 7, 1991; Alan D. Fiers in Case No. ____, United States District Court for the District of Columbia, judgment entered on July 9, 1991.

The need for civil litigation as a check against corruption of government officials is no mere abstraction in the *Avirgan* case. The evidence of complicity by government officials in illegal activity is the strongest possible demonstration of the need for independent judicial consideration. The dangers of government corruption, and the Congressional determination of the importance of remedying them through civil litigation, should have led the district court to exercise the greatest receptiveness in evaluating the reasonableness of the plaintiffs' case at the time of filing, when it appeared much of the evidence was in the hands of government officials with an interest in hiding their roles. Instead, the district court took a cavalier attitude toward discovery, as noted above, and punished the plaintiffs for failing to assemble the sufficiency of evidence which should have been gathered through court-supervised discovery.

III. The District Court and the Panel Erred in Failing to Consider the Circumstances Under Which Plaintiffs and Their Counsel Conducted Their Inquiries Prior to Filing the Complaint

While the standards applied by the district court would be inappropriate under any circumstances, they are particularly egregious in the circumstances of this case. In awarding sanctions under Rule 11, courts have been cautioned to "avoid the wisdom of hindsight," Fed. R. Civ. P. 11 advisory committee note, and to judge the conduct of counsel under the particular circumstances of the case:

> Thus, what constitutes reasonable inquiry may depend on such factors as how much time for investigation was available to the signer, whether he had to rely on a client for information as to the facts underlying the pleading, motion or other paper; whether the pleading, motion, or other paper was based on a

> plausible view of the law; or whether he had depended on forwarding counsel or another member of the bar.

Fed. R. Civ. P. 11 advisory committee note. As the 1983 amendment to Rule 11 was based upon the inherent power of the court as exercised under the "bad faith" exception, a similar caution should guide the application of sanctions under the "bad faith" exception as well. Fed. R. Civ. P. 11, notes of advisory committee.

Absent subpoena power, attorneys cannot be held to know every fact, but rather the facts that would become known through a reasonable inquiry. Where circumstances make the discovery of evidence exceptionally difficult, the rules should be interpreted to permit the filing of a complaint. Discovery would then serve its intended purpose of obtaining the evidence that would either support the complaint or lead to its amendment to conform to the discovered evidence.

An obvious impediment to the investigation by the plaintiffs was the fact that the crimes which caused their injuries took place in foreign countries. Indeed, the bombing which took place in Nicaragua was the result of shipments of explosives from the United States into Costa Rica, while the evidence of travels by the bomber involved stops in many other countries. Thus, any responsible inquiry into the cause of the bombing required the plaintiffs and their counsel to obtain information from many different countries, much of it from uncooperative sources. Only in the United States were there centralized sources of information subject to discovery. This was the case because United States government agencies had played key roles in investigating the bombing and because many of the defendants were residents of the United States.

Most importantly, the district court was aware that the plaintiffs, their sources and their employees were threatened

with death for revealing information about the defendants' activities prior to the filing of the complaint. This argues strongly for affording plaintiffs the relative safety of the judicial process, rather than requiring them to endure such risks to gather evidence on their own prior to any filing.

Further appreciation for the barriers to plaintiffs' inquiry should have been obvious to the court from the withholding of evidence which began once the filing of the complaint made available subpoena power and compulsory discovery processes. Numerous claims of privilege by the defendants, by government agencies and by non-party witnesses prevented plaintiffs from discovering much evidence relevant to their case. The resolution of these claims called for the most exacting inquiry, but the district court proceeded to summary judgment and even a sanctions order without resolving many of these claims.

Other circumstances after the entry of summary judgment, but before the award of sanctions, should have demonstrated to the trial court that evidence could have been produced only through compulsory process, and not the plaintiffs' unaided efforts. On June 28, 1988, prior to the entry of the sanctions order, defendant Posey was indicted by a grand jury in the Southern District of Florida for violations of the Neutrality Act based on allegations similar to those in plaintiffs' complaint. Case No. 88-6097-CR-Roettger, United States District Court for the Southern District of Florida. Since the entry of the sanctions order, defendant John Hull fled Costa Rica following an indictment in that country for drug trafficking. Information of January 12, 1989, Poder Judicial, Republic of Costa Rica, No. Inf. 052-DV-89. Since fleeing, defendant Hull, along with defendant Felipe Vidal, were both indicted for murder for their role in the bombing of the press conference which injured plaintiff Avirgan. *See New York Times*, March 1, 1990, *Washington Post*, March 1, 1990, p. A1.

In a case which faced remarkably similar difficulties in

obtaining evidence, the United States Court of Appeals for the District of Columbia overturned a dismissal of a complaint, saying:

> [D]ismissal of a complaint is not proper "when information which might be relevant to a . . . claim is unavailable for discovery.". . . Speculation about Executive privilege in this case cannot justify squelching the plaintiffs' complaint prior to any factfinding.

Ramirez de Arellano v. Weinberger, 745 F.2d 1500, 1513, (D.C. Cir. 1984). In the instant case, it could not reasonably have been predicted that government officials as well as individual defendants would successfully assert a wide range of privileges to block access to evidence of the particular facts which the court found determinative in its order of summary judgment. Surely if such circumstances would not justify dismissal of a complaint, they cannot justify sanctions against plaintiffs and their counsel.

Further, although this Court established a uniform statute of limitations for RICO actions subsequent to the filing of this action in May 1986, *Agency Holding Corp. v. Malley-Duff & Associates*, 483 U.S. 143, 107 S.Ct. 2759 (1987), at the time of filing it was not clear how much time remained for plaintiffs to assert their claim. Indeed, on appeal some defendants advanced the argument that the filing of this complaint was barred by the statute of limitations. (Joint Brief of Appellees Calero, Clines, Delamico, Hakim, Hull, Martin, McCoy, Owen, Quintero, Secord, Shackley and Singlaub, p. 72, fn. 45, Case No. 88-5720, United States Court of Appeals for the Eleventh Circuit.)

Viewing the circumstances as a whole at the time of the filing of this complaint, it cannot be said that plaintiffs or their counsel were acting in bad faith or had failed to conduct an inquiry which was reasonable under the

circumstances. Under very difficult circumstances the plaintiffs and their counsel obtained information amply justifying the filing of their complaint. To apply Rule 11 in a manner consistent with its intent as interpreted by the advisory committee notes, under the difficult circumstances in which the plaintiffs found themselves the district court should have required a lower quantum of evidence to be obtained prior to filing.

IV. The Courts' Decisions Create an Appearance of Improper Consideration of the Political Implications of Plaintiffs' Case

Finally, defendants have repeatedly characterized this case as "political" in an attempt to confuse the court about the true nature of the dispute.[2] While the case clearly has political implications, the case does not center on "political questions" which cannot be resolved by the courts. See, *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 710 (1962).

Plaintiffs' goal in this case was compensation for the injuries they suffered, a goal which could not be achieved through legislative inquiry or a criminal prosecution.

This Court must make clear beyond dispute that the political views of the plaintiffs or of those who attacked them are irrelevant to the resolution of this case. The award of sanctions in an order so lacking in references to legal standards but bristling with hostile characterizations of the

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[2] See, e.g.: "[t]he Federal Judiciary was not designed to provide a publicity forum for scandalous propaganda aimed at changing public opinion regarding the Nicaraguan Civil War." Defendant Posey's Motions for Dismissal and to Strike docketed June 19, 1986. The complaint is "a rambling discourse of political theatre." Defendant McCoy's Motion to Dismiss and Motion to Strike docketed July 30, 1986.

actions of plaintiffs' counsel creates the impression that the district court sought to punish the plaintiffs and their counsel for bringing a case fraught with political implications.

The judicial branch should not avoid cases that may cause political embarrassment to officials of another branch, but should take greater than ordinary care to demonstrate strict adherence to rules of procedure in order to maintain public confidence in the integrity of the courts. Cases touching on political questions require "discriminating inquiry into the precise facts and posture of the particular case." *Baker*, 369 U.S. at 217. Where parties have repeatedly sought to inject inappropriate political considerations into the decision of a case, and the proper resolution of the case has significant political implications, the "discriminating inquiry" of the court should have made clear that principles of law rather than politics governed its decision. The district court failed to exercise this level of care in its sanctions order. That order's failure to apply the standards of the law to the facts leaves the impression that the order was not based upon the authority of the cited law, but upon political animus toward plaintiffs and their counsel. To maintain public confidence in the integrity of the judicial system, the reversal of this sanctions order must be clear and emphatic.

The *Avirgan* case has served important public interests by provoking questioning about the nature and extent of military efforts directed against Nicaragua. Congressional and Executive branch inquiries have focused on violations of law by government officials rather than individuals, though defendants Secord, Hakim, Hull, and Posey have each been indicted for offenses included in those alleged by plaintiffs here. The public prosecutions have pursued theories of criminal liability different from the theories relied upon by plaintiffs in large measure because the public prosecutions have been blocked by claims of national security. The aspects of national security which are claimed to be threatened are essentially political in nature, as they concern

the foreign relations of the United States. It cannot escape judicial notice that these matters have been at the center of intense public debate regarding both the foreign relations of the United States and the conduct of those relations.

Public debate is the lifeblood of democracy. However embarrassing to some officials, the full, public consideration of the covert war against Nicaragua ultimately will be a healthy development for our political system.

The defendants repeatedly objected to any public discussion of the public policy implications of this case. These actions, coupled with the district court's failure to articulate reasons for its award, create the impression that the court has punished plaintiffs because their case created a political controversy. This impression is heightened by the staggering size of the award of fees, which, together with the court's criticism of plaintiffs and their counsel, has attracted negative publicity toward plaintiffs' counsel. The message sent by the court's award is not one of deterrence but destruction.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to grant petitioners' applications for certiorari.

Respectfully submitted,

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APPENDIX A

National Council of the Churches of Christ in the U.S.A.

The National Council of the Churches of Christ in the U.S.A. is a community of communions composed of 33 national religious bodies, Protestant and Eastern Orthodox, having an aggregate membership of more than 40 million adherents in the United States. It is governed by a board of some 260 members appointed by its member denominations in proportion to their size and support of the Council. The Council does not claim to speak for all of those adherents, but seeks to carry out the wishes of their representatives as expressed in the policies they adopt through the Governing Board.

Church of the Brethren

The Church of the Brethren is a Christian body, with some 150,000 members in the United States and historical and ecumenical ties to many churches throughout the world. The Brethren are known for peace and service ministries. As of October 1989, the Church of the Brethren General Board has eight mission personnel serving in Central America, including El Salvador and Nicaragua, and maintains a partnership with a Nicaraguan Protestant church called the Mision Cristiana de Nicaragua.

The Church of the Brethren General Board enters as an amicus into this case because we are convinced that the legal and moral issues are significant. In 1987, the Annual Conference of the Church of the Brethren in a resolution, "Quest for Order" affirmed "obedience to human law, including obedience to the law by government itself..." (emphasis added). The waging of war against Nicaragua has been found a violation of international law by the World Court, and was a violation of our domestic law as found in the United States Constitution.

Therefore, the Church of the Brethren has an interest in this litigation, not only because of its potential affect upon our own mission program in Central America, but for the integrity of the United States government as well.

Maryknoll Fathers and Brothers

The Maryknoll Fathers and Brothers is a missionary society of priests, brothers and lay associates which, during the times covered by the allegations in the underlying litigation had Churches, chapels, mission programs and sixty-one missioners in Central American countries. These Churches, chapels, mission programs and missioners were at risk of injury from the criminal acts described in the plaintiffs' complaint. Therefore, the Maryknoll Fathers and Brothers have an interest in discovering and deterring criminal activity based in the United States but directed against nations in Central America, and therefore, has an interest in the just resolution of the underlying case.

Church Women United

Church Women United is a national ecumenical movement that brings Protestant, Roman Catholic, Orthodox and other Christian women together into one community of prayer, advocacy and service, and relates to half a million women in the United States. Working for a just, caring society, we are particularly concerned about criminal enterprises that could threaten our programs of service or our sisters and brothers in other nations with whom we are working to build greater international understanding. We therefore are adamant in opposing any restrictions which limit investigations of criminal activity such as was alleged in the underlying complaint. The Christic Institute, through its investigation of criminal activity and its filing of a complaint, has set an example for other organizations and attorneys to

take up unpopular and risky cases. We call for the reversal of the order of sanctions, and further ask that the greatest possible leeway be granted by the courts to further the intent of Congress in adopting the Racketeer Influenced and Corrupt Organizations Act so that those who bring harm to American citizens here or abroad may be brought to justice.

Disciples of Christ, Peace Fellowship

The Disciples Peace Fellowship is a religious organization directly related to the Christian Church (Disciples of Christ). During the time covered by the allegations in the underlying litigation, our organization has encouraged and/or sponsored group visits to Central America, and the religious denomination to which we are affiliated has had mission programs and personnel in Central American countries. More importantly, our church has supported the activity and work of several religious groups in Central America whose pastors and laity are citizens of those counties. All of the above-mentioned activities, programs and persons were at risk of injury from the criminal acts described in the plaintiffs' complaint.

The Disciples Peace Fellowship is a religious organization whose members and supporters are based in congregations of the Christian Church (Disciples of Christ) throughout the United States. There are pastors and laity in these churches who seek to provide service and counsel to victims of drug abuse in the United States, some of whom may even be members of these churches. These efforts to help such persons, and to prevent others from falling victim to drugs, have been overburdened by the enormous increase in the availability of drugs in the United States. This organization therefore has an interest in discovering and deterring the smuggling of narcotics into the United States as alleged in the complaint in the underlying action.

General Conference Mennonite Church

As one of the denominational sponsors of the Mennonite Central Committee (MCC), Akron, Pennsylvania, the General Conference Mennonite Church contributes workers from among its members and significant financial resources to the work of MCC in Central America, much of which is in support of the national Mennonite churches there. The General Conference Mennonite Church is a fraternal church with the Central American Mennonite churches in the Mennonite World Conference.

As of the 1988-89 report of the Mennonite Yearbook, there are 212 Mennonite churches with 10,085 members in Central America. A total of 40 MCC workers were stationed in those countries. Mennonite periodicals have carried reports of worship services of the national Mennonite churches in Central America which have been entered and disrupted by armed soldiers, and whose members have been held at gunpoint and kidnapped. Young male members of these churches have been forcibly impressed into one armed group or another, despite the long-standing public statements that all of the Mennonite churches adhere to peacemaking theology and have sought official recognition as conscientious objector churches. Anabaptist/Mennonite convictions on the way of peace date back to 1525, during the Reformation in Europe. Nevertheless, in addition to the attacks upon, national Mennonite church members, MCC church and development workers have received repeated death threats and have several times been kidnapped.

In North America, the Mennonite churches sponsor 18 hospitals and 11 mental health centers. Almost all of these offer either hospital critical care or mental health residential rehabilitation programs for drug abuse patients. The resources of these institutions have been severely strained in recent years as funds had to be diverted from other medical

and mental health care needs in order to cope with the rapid and large increase in drug abuse care needs.

With these direct involvements in the Central American conflicts and in light of the Congressional testimony and later convictions of high-placed United States officials, the General Conference Mennonite Church has followed with intense interest the lawsuit initiated by the Christic Institute of Washington, DC on behalf of the plaintiffs.

(7) (7) (5)

Nos. 91-617, 91-618, 91-619

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

TONY AVIRGAN, *et al.*,
Petitioners,

v.

JOHN HULL, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RESPONDENTS' JOINT CONSOLIDATED SUPPLEMENTAL BRIEF IN OPPOSITION TO MOTIONS FOR LEAVE TO FILE AND RESPONSE TO BRIEFS *AMICUS CURIAE* OF TRIAL LAWYERS FOR PUBLIC JUSTICE AND NATIONAL COUNCIL OF CHURCHES OF CHRIST, *et al.*

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SUMMARY OF THE ARGUMENT

This case raises none of the policy issues cited by the *amici.* Sanctions for filing a frivolous suit and maintaining it with a false affidavit of counsel do not retard the pursuit of justice by litigants or lawyers, whether private or public.

This litigation was not, as *amici* contend, a suit for personal or business injuries allegedly suffered by petitioners Avirgan and Honey. It was the Christic Institute's effort to conduct its own Iran/Contra investigation and inquiry into 30 years activity of the "Secret Team." In their rush to use the La Penca bombing as a vehicle for such an investigation, petitioners ignored the fact that they had only rumor and innuendo on which

to base allegations that the defendants were responsible for that bombing. This misconduct was compounded by the filing of the deceptive Sheehan affidavit in an effort to hide this deficiency.

The extent of petitioners prefiling investigation cannot excuse the absence of a basis to believe that causation could be proved. The district court properly sanctioned the petitioners for their misconduct in filing the suit and perpetuating it by the Sheehan Affidavit—misconduct that went far beyond the "every day" activities of lawyers in federal court.

BACKGROUND OF THE CASE

Given the conflicting and inaccurate presentation of the nature of this case in the brief offered for filing by *Amicus* National Council of Churches ("Churches"), some further background of the litigation and its conduct is necessary. This case was *not* filed or pursued as a claim for injuries to the individual plaintiffs as Churches suggests.[1] Rather, Mr. Sheehan and the Christic Institute brought this case in order to use the subpoena power of the federal courts to conduct their own Iran/Contra investigation.

Mr. Sheehan made clear on several occasions that, prior to the La Penca bombing, he was an attorney with a cause searching for a way to commence litigation to investigate events in Central America.[2] He saw the

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[1] Petitioners' damages were minimal, in any event. Tony Avirgan's alleged damages from the bombing amounted to an injured finger, lost income, and lost camera equipment, for which he was compensated by his employer's insurance carrier. The only damages his wife, Martha Honey, allegedly incurred from the bombing were lost income and loss of consortium.

[2] In a speech reprinted in D. Sheehan and D. Ortega, *Assault on Nicarauga*, Mr. Sheehan stated that he learned that military equipment

> was going to the farm of a millionaire rancher down in Costa Rica. This rancher is a man by the name of John Hull, who had become the major ally for the Contras there. Well, we were

La Penca bombing as providing access to the federal courts for this purpose. Mr. Sheehan and the Christic Institute relied on rumor and speculation to allege a connection between the La Penca bombing and arms shipments to Central America [3] and between the defendants and Colombian drug lords [4] so that they could plead a cause of action and provide themselves a case that would generate fund raising.

Petitioners' conduct of discovery further demonstrated that this suit was not filed to compensate plaintiffs for their alleged injuries. Petitioners conducted discovery in a desultory manner until March 1988, when the district court denied their motion to continue the June 1988 trial date. Over 120 deposition notices were then served during the last two months before the May 1988 discovery cut-off.

Although they deposed alleged "key" defendants only at the last moment or not at all, petitioners sought many

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> quite distressed by this and felt that we should hurry up and find ourselves a client . . . .

(R38.1213 Ex. F. at 17.)

[3] In this connection, the contention of *Amicus* Churches that the La Penca bombing "was the result of shipments of explosives from the United States into Costa Rica" (Churches Brief 11) is contrary to the evidence in the case and the ruling of the district court, which found that plaintiffs made "no showing" that the kind of explosives defendants were allegedly transporting could be "directly, or indirectly, traced to the explosive used at La Penca." *Avirgan v. Hull*, 691 F. Supp. 1357, 1374 (S.D. Fla. 1989).

[4] For example, at the initiation of the lawsuit and at numerous times throughout the litigation, the petitioners publicy alleged that defendants had combined with Colombian drug kingpins (such as Pablo Escobar and Jorge Ochoa) to form the alleged criminal enterprise responsible for the La Penca bombing. (*See, e.g.*, R4.141.38-39; R4.150.32.) However, at deposition, plaintiffs admitted no knowledge of any connection between these drug kingpins and the other defendants. (R45.1202.293-94.) Indeed, plaintiffs' filings in opposition to defendants' motions for summary judgment indicated that plaintiffs had no proof of a connection with the drug lords. (R17.635; R32.1082; R33.1099; R33.1102; R34.1113; R34.1130; R36.1157; R37.1176; R39.1268.)

high-publicity depositions in their last-minute discovery. Petitioners deposed or noticed the depositions of Oliver North, Fawn Hall, the Offices of the President and Vice-President, a dozen federal agencies, and Vice-President George Bush's son and security advisor. The depositions were publicized in the monthly Christic Newsletter and telephone "hotline." Readers of the Christic Newsletter were urged to write their congressman to call attention to the "numerous criminal acts" being uncovered by the Christic Institute. *See, e.g.*, Christic letter, *infra* note 5. The depositions were scheduled to coincide with the beginning of the presidential campaign, and readers were asked to "bring up" the Christic lawsuit as part of the electoral process. (R37.1178 Ex. E.)

While discovery lagged, the fund-raising and publicity efforts of the Christic Institute were in full swing. Pleadings in the case were sold by the Institute to raise money. For example, the Sheehan Affidavit (with photos) was available for $10.00. The complaint could be purchased for only $5.00. Plaintiffs' La Penca report was $8.00. Buttons, decals, and bumper stickers were $1.00 each ($.50 for orders over 100). (R37.1179 Ex. E.) Frequent mailers emphasized the Christic Institute's world-wide investigation.[5]

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[5] The following letter dated April 24, 1987 from the Christic Institute is an example.

> Dear Friend:
>
> Would you like to subpoena, question under oath, and prosecute the Secret Team working with Oliver North? With the help of supporters like yourself, we at The Christic Institute can do just that.
>
> * * * *
>
> We are the only private investigation with federal subpoena power, and our investigation has tracked the Secret Team's racketeering activities through Cuba, Southeast Asia, Libya, Chile, and Central America.
>
> * * * *
>
> The Christic Institute will put over 100 people under oath to develop the record of truth during the coming months. We

As the foregoing shows, petitioners, fueled by their extensive fund raising, used the scarce judicial resources of the federal courts not to obtain compensation for plaintiffs, as *Amicus* Churches contends, but rather to conduct their own Iran/Contra investigation. The need to stretch from support for the Contras to responsibility for the La Penca bombing caused petitioners to engage in sanctionable conduct as a necessary foundation for that private inquiry.

ARGUMENT

I. THIS CASE RAISES NONE OF THE POLICY ISSUES ADDRESSED BY THE *AMICI*

Contrary to the contentions of the proposed *amici*, this case does not involve the ability of plaintiffs to pursue justice, the chilling of public interest law, or the independence of the judiciary. Petitioners—plaintiffs Avirgan and Honey, their counsel, Daniel Sheehan, and his "law firm," the Christic Institute—were sanctioned not because they could not eventually prove their case nor because their suit was embarrassing to high-ranking government officials. Rather, they were sanctioned for filing and pursuing a case through two years of costly and irrelevant discovery on the basis of a frivolous complaint and the false Sheehan Affidavit. *Avirgan v. Hull*, 125 F.R.D. 189, 190 (S.D. Fla. 1989) (J. App. I, 51-A). *Amici* do not, and cannot, contend that lawyers and litigants may, with impunity, make misrepresentations to

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have doubled our staff to handle the litigation, public education, and organizing task before us. To bring the truth about La Penca and the Secret Team to the American people is a very expensive undertaking. Your generous contribution will help make this effort possible.

Drugs and assassination programs never serve the cause of democracy. Let's put a stop to them. Together we can win justice for the La Penca victims, expose the criminality of federal officials and stop the Secret Team. Thank you for your concern and participation.

(R10.405 Ex. A.)

federal courts or file and pursue frivolous suits based on such misrepresentations. Accordingly, the sanctions imposed on petitioners for such misconduct will not retard the pursuit of justice.

Moreover, neither one's status as a public interest law firm nor the nature of one's clients confers immunity from sanctions for bringing or maintaining frivolous suits and certainly not for filing false affidavits. The Second Circuit has rejected "out of hand" the claim that "special treatment of sanctions should be given to attorneys who handle unpopular civil rights claims, particularly those representing indigents and minorities." *Oliveri v. Thompson*, 803 F.2d 1265, 1280 (2d Cir. 1986), *cert. denied*, 480 U.S. 918 (1987). As the court in *Oliveri* held:

> All attorneys are to be held to the same standards of conduct, no matter who their clients are. . . . Underlying the various rules imposing sanctions for attorney misconduct is a premise that all attorneys are expected to conduct themselves and their lawsuits according to the standards necessary for the proper, efficient functioning of our legal system.

Id. at 1280-81; *see also Roadway Express v. Piper*, 447 U.S. 752, 762 (1980) ("Dilatory practices of civil rights plaintiffs are as objectionable as those of defendants.")

II. THE EXTENT OF PETITIONERS' INVESTIGATION DOES NOT EXCUSE THEIR FAILURE TO HAVE A REASONABLE BASIS TO FILE SUIT

The contention of *Amicus* Trial Lawyers for Public Justice ("Trial Lawyers") that petitioners conducted an "extensive" and "extraordinary" prefiling investigation (Trial Lawyers Brief 1, 2) is irrelevant to whether they violated Rule 11's requirement that every signed paper be "well grounded in fact." Quality not quantity is required. It is not the length of an investigation, but the result, that matters.[6]

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[6] Equally irrelevant are the indictments, convictions and reversals cited by Churches and the repeated references in its brief to

Rule 11 requires the signer to engage in a two-step process before asserting factual positions. First, the signer must conduct a reasonable prefiling investigation of the facts. *Donaldson v. Clark*, 819 F.2d 1551, 1555 (11th Cir. 1987). Second, upon reviewing the results of that investigation, the signer must reasonably believe that the position is "well grounded in fact . . . and not interposed for any improper purpose." Fed. R. Civ. P. 11. The reasonableness of the belief is judged under an objective standard. Thus, the complaints and all subsequent papers signed by Mr. Sheehan should have been well grounded in fact, regardless of the prefiling investigation.

Petitioners' two-year prefiling investigation, allegedly involving interviews of hundreds of witnesses, and petitioners' failure to unearth any competent evidence linking defendants to the La Penca bombing, should have led them to conclude that the allegations against respondents were not reasonable. Given Mr. Sheehan's allegedly extensive trial experience in complex litigation (R4.141), the groundlessness of the complaints should have been even clearer to him. Likewise, petitioners could not have reasonably believed that the Sheehan Affidavit—with its unknown, nonexistent, and dead "sources," its fabricated testimony, and the deceptive style that masked its shortcomings—was well grounded in fact.

The most telling evidence of the lack of a reasonable basis for filing suit and of the falsity of the Sheehan

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wrong-doing in "high places." Petitioners were not sanctioned in this case because of lack of a reasonable basis to believe that arms shipments were made to Central America or that government officials may have lied to Congress. Oliver North, John Poindexter, Robert McFarlane, Jose Fernandez, and other government officials named by Churches were not even parties to this suit. Conversely, having a reasonable basis to believe that arms shipments were made to the Contras or that false testimony was given to Congress does not justify naming 29 defendants as responsible for the La Penca bombing.

Affidavit was the sworn affidavit of Carl Jenkins. In his affidavit, Mr. Jenkins recounted his conversation with Mr. Sheehan during which Mr. Jenkins objected to certain information attributed to him in the Sheehan Affidavit:

> At the time Mr. Sheehan said to me that he was not concerned with the actual state of my knowledge an [sic] that he was using the affidavit simply to keep the case in court so that he could take discovery to prove the story. He further told me that he would drop sources such as me once he had developed hard sources. He also told me that the list of defendants whom he had sued was likely too large and that his intent was to use discovery to trim the list to those whom he thought were the real criminals.

(R16.595 Ex. D-1.)

III. THE DISTRICT COURT APPLIED THE APPROPRIATE RULE 11 STANDARD

Amicus Churches contends that the district court "held that a plaintiff must possess admissible evidence sufficient to prove their [sic] case *prior* to the filing of a complaint and discovery." (Churches Brief 4.) To the contrary, the district court found the allegations in the complaint were "based upon unsubstantiated rumor and speculation from unidentified sources with no first hand knowledge." 705 F. Supp. at 1545 (J. App. I, 33-A). Such "evidence" does not constitute a sufficient factual basis under Rule 11.[7] *See, e.g.*, Judge Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181, 187 (1985); *Whittington v. Ohio River Co.*, 115 F.R.D. 201, 207 (E.D. Ky. 1987); *Kendrick v. Zanides*, 609 F. Supp. 1162, 1172 (N.D. Cal. 1985); *Miller v. Schweickart*, 413 F. Supp. 1059, 1061 (S.D.N.Y. 1976).

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[7] Nor does the result of John Hull's criminal libel trial, as *Amicus* Trial Lawyers (Trial Lawyers Brief 1-2) suggests. As respondents have already explained in their joint consolidated brief in opposition to the petitions, the Costa Rican court held only that Avirgan and Honey lacked the necessary intent to injure required to sustain the criminal charges. (R3.103.)

Furthermore, the district court did not sanction the petitioners solely because they could not survive summary judgment on the issue of causation, as *Amicus* Trial Lawyers contends. (Trial Lawyers Brief 4.) Rather, petitioners were sanctioned because they filed this case on the basis of rumor and innuendo and then maintained it by filing a false affidavit. Such frivolousness and deception were not involved in the *Matsushita* decision cited by Trial Lawyers.

Likewise, petitioners were not entitled to special consideration because of the circumstances of their prefiling investigation. The La Penca investigation was conducted by two journalists on the scene in Costa Rica. Information on La Penca was in Central America, not in the United States. Petitioners themselves have characterized the investigation as "massive" and *Amicus* Trial Lawyers calls it "extraordinary." Neither time [8] nor geography was responsible for the failure of petitioners' investigation to produce a reasonable basis to tie these defendants to La Penca.

Finally, *Amicus* Trial Lawyers also suggests that petitioners' failures of proof are the sort of "things that happen in litigation throughout the federal courts every day." (Trial Lawyers Brief 3.) To the contrary, lawyers do not submit false affidavits; they do not fabricate witnesses and testimony; they do not seek protection for dead, nonexesistent, or unlocatable witnesses; they do not sue all possible defendants until they can determine whom to drop; they do not pay their main witness; [9] and they do not pay their clients.

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[8] The suggestion that petitioners' prefiling investigation was rushed because of a presumed two-year limitations period in bringing RICO claims is raised for the first time by *Amicus* Churches (Churches Brief 13), and a two-year limitations period was not argued by respondents in the court of appeals.

[9] In his deposition, petitioners' chief witness, Mr. Wheaton, admitted receiving at least $15,000-$20,000 *in cash* from the Christic Institute for "reimbursement" for his expenses, although he kept no records of expenses or payments. (R18.656, Ex. C at 621-24.)

CONCLUSION

For the foregoing reasons, the motions to file *amicus* briefs in support of petitioners should be denied. Furthermore, the *amicus* briefs provide no justification for granting the petitions of Mr. Sheehan, the Christic Institute, and plaintiffs Avirgan and Honey for writs of certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
DEC 31 1991
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No. 91-618

In The
Supreme Court of the United States
October Term, 1991

Daniel P. SHEEHAN, Esq.
Petitioner,

versus

John HULL, Richard Secord, Albert Hakim, Thomas Clines, Adolfo Calero, Robert Owen, John Singlaub, Theodore Shackley, Rafael "Chi Chi" Quintero, Ronald Joseph Martin, Sr., Mario Delamico, James McCoy, Moises Nunez, and Jorge Gonzalez,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITIONER DANIEL P. SHEEHAN'S REPLY TO THE RESPONDENTS' JOINT CONSOLIDATED BRIEF IN OPPOSITION

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28 U.S.C. §1927 . . . . . *passim*

Fed. R. Civ. P. 11 . . . . . *passim*

PETITIONER DANIEL P. SHEEHAN'S REPLY TO THE RESPONDENTS' JOINT CONSOLIDATED BRIEF IN OPPOSITION

I. Reply to Respondents' Argument I

In their Opposition to Attorney Daniel Sheehan's Petition for Writ of Certiorari, the Respondents contend that this Court's 1990 holding in *Cooter & Gell v. Hartmarx Corp.*, 110 S. Ct. 2447 (1990) legally forecloses virtually any appellate review of the factual record below to determine whether a finding of fact made by a District Court in support of a Rule 11 Order of Sanction was supportable - assuming said finding is deemed by the Court to be a "finding of fact."

However, this Court's holding in *Cooter & Gell* does not preclude a detailed review by an appellate court of the factual record below to determine whether a finding of fact made by a district court in support of a Rule 11 order is supportable. *Cooter & Gell* simply decided that such a detailed review of the factual record below by an appellate court would have to result in a determination by that appellate court that the district court had abused its discretion in arriving at a given finding of fact (as distinguished from a determination that the District Court was simply incorrect in its finding) - before the appellate court could reverse such a finding of fact. Even a cursory review by an appellate court of the factual record of the case below reveals that the district court did abuse its discretion in finding that Sheehan possessed no evidence to support a good faith belief that Defendant Hull had hired Defendant Amac Galil to carry out the May 1984 assassination attempt against Eden Pastora, as a member of an on-going federal criminal racketeering enterprise of which each of the defendants named was a knowing and active member at the time of the 1984 La Penca bombing. Sheehan contends that such a determination by an appellate court is virtually mandated by the record of the undisputed evidence shown to have been possessed by Sheehan at the time of the filing

of his complaint in May of 1986 to support this good faith belief - even if that evidence was in the form of hearsay statements and information that was not in a court-admissible form at the time his complaint was filed, and even if those few pieces of evidence challenged by the Respondents as having been "fabricated" by Sheehan in his December 1986 Affidavit are entirely excluded.

Sheehan argues, secondly, in his Petition asking this Court to review the Rule 11 order imposed against him, that Judge King's "finding" that Sheehan filed a 1986 civil complaint against the Respondents "without having any reasonable belief at the time of the filing of the complaint that the complaint was well-grounded in fact was a legal ruling, and not a "finding of fact" at all. The district court stated that this "finding" was explicitly predicated directly upon its determination that Sheehan had filed his 1986 civil complaint "without having in his possession any competent, first-hand evidence establishing the theory of his complaint," and, therefore, Sheehan must not have had any reasonable expectation of being able to develop competent, first-hand evidence through legal discovery at the time he filed his complaint. Petitioner Sheehan submits that this ruling of law (i.e., that an attorney must have in his possession at the time of the filing of a civil complaint "competent, first-hand evidence to support the theory of his complaint") is clearly erroneous and is directly contrary to the state of the law which authorizes an attorney to file a civil lawsuit predicated exclusively upon hearsay evidence or upon other evidence which is not in a court-admissible form at the time of the filing, so long as the attorney is able to form a reasonable belief that the factual allegations he sets forth in his complaint are true.

In his Petition, Sheehan makes an additional argument in support of his contention that the district court's "finding" that Sheehan filed the 1986 civil complaint against the Respondents "without having any reasonable belief at the

time of the filing of the complaint was well-grounded in fact" was, in fact, a legal ruling subject to *de novo* review by this Court - and not a "finding of fact" entitled to any degree of non-reviewable forbearance on the part of an appellate court. This second argument is Sheehan's contention that the district court plainly based its "finding" that Attorney Sheehan "possessed no competent, first-hand evidence establishing the theory of his complaint" directly on its earlier June 1988 Rule 56 review of evidence. On the basis of that review, the district court concluded that neither the plaintiffs nor Attorney Sheehan had any evidence to sustain their contention that Defendant Hull had hired Defendant Amac Galil to assassinate the dissident Contra leader, Eden Pastora or that Defendant Hull had recruited the assassin in Hull's capacity as a member of an on-going federal criminal racketeering enterprise of which any of the Respondents was a member. The district court reached this conclusion simply because Sheehan had allegedly failed to present any such evidence directly to it in the form of sworn affidavits, officially certified government documents, certified translated document or sworn depositions in May of 1988 in the Opposition to the Defendants' Rule 56 Motions For Summary Judgment.

Respondents argue that the district court's "finding" need not be considered a legal ruling which is totally derivative of its June 1988 Rule 56 review of evidence presented by Sheehan since it is possible to infer that Judge King arrived at his "finding" by, instead, "importing" his separate finding that Sheehan had misrepresented certain witnesses in the December 1986 Affidavit into the finding that Sheehan had "no reasonable belief."

Sheehan's Reply to this Opposition argument is that A) a District Court's plainly erroneous legal ruling given in support of a Rule 11 order is not entitled to any degree of presumptive legitimacy which should require an appellate court to "infer" some factually different ground as support for

said Rule 11 legal ruling than that which is explicitly given by the District Court in its Order, and B) a "bad faith" factual finding that is made by a District Court which goes to the comparative credibility of legal counsel and non-cross examined affiants and which attributes scienter and bad faith to a practicing attorney without according him the type of due process evidentiary hearing which was required by this Court in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1979) cannot legally be allowed to be "imported" into a Rule 11 order of sanction and substituted as a "finding of fact" which supports the imposition upon a practicing attorney pursuant to Rule 11 of the full costs and full attorneys fees of his opponents - when such a bad faith finding should require such a hearing.

Presuming that both of their first two arguments made to shelter the Rule 11 order from review will fail, thus requiring this Court to undertake a detailed review of the factual record below and to arrive at the obvious conclusion that the Rule 11 "finding" of "no reasonable belief" on the part of Sheehan was a purely legal ruling predicated squarely upon the earlier June 1988 Rule 56 ruling that neither Sheehan nor his clients had any competent, first-hand evidence to sustain their charges made against the Respondents in their 1986 complaint, the Respondents - for the first time in the history of this almost three-year old appellate process - undertake to argue that they did positively "demonstrate" in support of their May 1988 motion for summary judgment, that the petitioners had no evidence that any of the Respondents "caused" the La Penca bombing. This long-delayed, purported "demonstration" consists of directing this Court's attention to four specific submissions made by Defendant Shackley in support of his motion for summary judgment and reference to two submissions made by Defendant Rob Owen in support of his Rule 56 motion. The submissions with respect to Defendant Shackley were:

1. Defendant Shackley's statement of Material Facts Not in Dispute (which Respondents contend were never "controverted"by the plaintiffs);

2. Plaintiffs' Response to Defendant Shackley's Second Request for Production of Documents;

3. Plaintiffs' Answers to Defendant Shackley's Interrogatories;

4. The affidavits of eighteen people whom plaintiffs described as being in a position to know of any involvement by Defendant Shackley in Contra-related activities - which affidavits contain explicit denials of any first-hand knowledge by the affiants of any involvement of Shackley in the activities against the plaintiffs alleged in the complaint;

Attorney Sheehan's Reply to each of these arguments is as follows:

1. Plaintiffs did respond directly to Mr. Shackley's statement of material facts not in dispute in their Opposition to Shackley's renewed motion for summary judgment, and filed sworn testimony directly contradicting assertions made by Shackley in his statement of material facts. The plaintiffs, thereby, created a genuine issue of material facts in dispute. R17.635. Plaintiffs later supplemented this opposition with a filing that included the 500 page sworn affidavit of Edwin Wilson which further contradicted Shackley's assertions. R29.995.

2. Plaintiffs supplemental response to Shackley's renewed motion for summary judgment included a declaration demonstrating that at the time of the document request, as throughout the entire course of the lawsuit, Shackley had himself obstructed discovery by refusing to supply responses to plaintiffs' discovery requests. *Id.* Instead, Shackley filed a

motion for summary judgment each time he was presented with a discovery request, and used the pendency of the motion as a basis for not producing documents.

3. In their response to Mr. Shackley's second production request, plaintiffs named more than twenty five witnesses believed to have first-hand knowledge about certain allegations made against Shackley in the complaint. R16.595, Ex. C. In addition, plaintiffs named dozens of additional witnesses with knowledge about the enterprise's activities as alleged in the complaint, and applied them to Shackley under the RICO provisions. (*Id.*)

4. Plaintiffs' opposition to Shackley's renewed motion for summary judgment contained excerpts of sworn testimony which set forth evidence supporting the allegations made in the complaint against Shackley. R16.595. Furthermore, Plaintiffs supplemented this opposition with a filing supported by seventeen exhibits of testimony and documentation which raised issues of material fact concerning Shackley's participation in the RICO enterprise. R29.995.

Respondents argue in their Opposition that their Rule 56 filings "both negated the causation element and pointed out petitioner's failure to produce sufficient evidence to create a genuine issue of fact as to causation." A cursory examination of Respondents Rule 56 motion papers, including those of Mr. Owen, demonstrate that those papers were plainly conclusory, bare-boned and in no way adequately controverted the evidence possessed by plaintiffs. Mere denial by a moving defendant of the allegations made by a non-moving plaintiff is not sufficient to meet the movant's burden. *McKinney v. Dole*, 765 F.2d 1129, 1135 (D.C. Cir. 1985).

II. Reply to Respondents' Argument II

Respondents contend that Petitioner Sheehan submitted a sworn affidavit to the Court which Judge King found "set forth seventy-nine witnesses whom Sheehan represented possessed knowledge that the defendants placed the bomb that injured the plaintiff" - but who, when the court compelled disclosure of the identities of these witnesses, turned out to be sources many of whom did not exist, whose names were not known to Mr. Sheehan, who had never personally spoken to Mr. Sheehan or who denied first-hand possession of the information attributed to them by Mr. Sheehan.

In the Sheehan Petition for Certiorari, this Court's attention was directed to evidence in the record below demonstrating that Judge King's factual findings with regard to Sheehan's affidavit are simply factually incorrect - and incorrect to a degree that exceeds any reasonable degree of "discretion" placed in the hands of a district court by this Court in *Cooter & Gell*, given the objective nature of the factual evidence in the record below.

In addition, Sheehan pointed out to the Court that the nature of the factual findings made against him by the district court was precisely the nature of factual findings which this Supreme Court has held in *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1979) require a full evidentiary hearing prior to their establishment, since they involve issues of comparative credibility, good faith and motive. Sheehan argued, therefore, that these findings made as a "condition precedent" to the entrance of the Order of Sanctions against him were constitutionally precluded by this Court's holding in *Roadway Express* since Sheehan was never accorded any such evidentiary hearing.

In their Opposition to Sheehan's Petition the Respondents argue, first, that Attorney Sheehan was not constitutionally entitled to such an evidentiary hearing prior

to the imposition of a $1,200,000.00 punitive sanction against him because Sheehan did not expressly request such an evidentiary hearing in writing from the District Court, as is allegedly mandated by Local Rule 10.B.1 of the Southern District of Florida.

With regard to the Respondents' argument that "respondents' motions for attorneys' fees and costs put all petitioners, including Mr. Sheehan, on notice of the amount and type of sanctions sought and the legal and factual grounds for them," repeated intensely adversarial motions for sanctions filed by the respondents characterized the entire history of the litigation below - and all of those motions had previously been summarily rejected by the District Court. In light of this history, it is totally unsupportable to contend that the mere filing of one more such motion by these respondents - especially in light of the extraordinary nature of this particular motion - put Sheehan "on notice" that he had to file a written request to be given a full evidentiary hearing in order to stave off a personal Bad Faith Order of Sanctions equal to the total costs and attorneys' fees of the respondents. Under these circumstances, Sheehan's failure to avail himself of the Rule may not be viewed as an informed waiver of his right to a hearing.

For a waiver of a constitutional right to be effective it must be clearly established that there was an intentional relinquishment of a known right. *Brookhart v. Janis*, 384 U.S. 1, 4 (1966). Respondents have made no such showing. Moreover, the district court granted hearings to the respondents on a number of motions without a written request. (*See e.g.* R49.1177; R42.546.)

Finally, Respondents assert that the District Court's findings pass due process muster. But not only are the findings deficient in terms of specificity but they contain no delineation of what sanctioning authority applies to what perceived misconduct. The District Court used bad faith "findings of fact" to bolster its Rule 11 Order, Rule 11

arguments to bolster its "exception" order and Rule 56 methodology to bolster both - thus making it extremely difficult to decipher which elements of alleged misconduct supported which aspect of its Orders. The respondents defend the District Court's conduct by an entirely inapposite quotation from this Court's opinion in *Chambers v. NASCO*, 111 S. Ct. 2123 (1991): "[i]n circumstances such as these in which all of a litigant's conduct is deemed sanctionable, requiring a court first to apply rules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power . . . is contrary to the aim of the rules themselves." *Chambers*, 111 S. Ct at 2136. In *Chambers*, this Court was merely saying that a court need not invoke specific sanctioning authorities available to it, prior to imposing bad faith sanctions pursuant to its inherent authority. *Chambers* involved a plaintiff sanctioned solely pursuant to the bad faith exception; in the quotation cited by Respondents, this Court was merely responding to petitioner Chambers' argument that Rule 11 and §1927 should displace a court's inherent power to sanction under the bad faith exception. *Chambers* established that a court may use solely its inherent power to sanction. Nevertheless, if it chooses to use several different authorities, it must make specific findings to support each. As the Third Circuit recently explained:

> [T]he court did not identify and relate the violations to each source of authority in a way that would permit meaningful appellate review with respect even to Rule 11. This infirmity is a critical obstacle because Rule 11 and §1927, while probably duplicitous to some extent, cover different actions in a lawsuit and require the application of disparate standards of proof.

Jones v. Pittsburgh National Corporation, 899 F.2d 1350, 1358 (3rd Cir. 1990).

III. Reply to Respondents' Argument III

In his Petition asking this Court to review the $1,200,000.00 §1927 Order of Sanctions imposed against him for "multiplying proceedings" against the respondents, Sheehan argued that 28 U.S.C. §1927 was created with the intention of imposing only the minimum reasonable sanction upon an attorney necessary to deter him from repeating his specific conduct of "multiplying proceedings." See *U.S. v. Associated Convalescent Enterprises, Inc.*, 766 F.2d 1342, 1347 (9th Cir. 1985). Judge King's Order woodenly imposed the full costs and attorneys fees incurred by the defendants throughout the entire course of the case below upon Sheehan while the only specific conduct the court referred to which "multiplied proceedings" was Sheehan's resistance to certain specific discovery motions demanding the identity of the sources of some of his information.

To this objection, the Respondents cite *In re TCI, Ltd.*, 769 F.2d 441 (7th Cir. 1985) which they argue establishes the principle that a district court is granted the authority by §1927 to impose an award equal to the full attorneys' fees and costs incurred by a defendant upon a finding that the original complaint itself was "baseless." However, *In re TCI, Ltd.* considered this issue only in dicta. In fact, the 7th Circuit upheld the lower court's decision not to award §1927 sanctions from the beginning of the suit. In re TCI, Ltd., 769 F.2d at 449.

December 31, 1991

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